

## **Tackling Invasive Non-Native Species in the UK Overseas Territories**

### **GENERIC BIOSECURITY BILL, 2019**

#### **TEXT OF THE GENERIC BILL**

##### **ARRANGEMENT OF CLAUSES**

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#### ***DRAFTING NOTES (for guidance only)***

##### ***General (see also the separate Explanatory Note)***

- The draft is a 'generic' draft for use by British Overseas Territories (also known as UK Overseas Territories.)*
- It is a 'maximalist' draft, providing all possible needed powers and controls and protections and will need to be adapted by each OT.*
- The draft uses letters for Parts and clauses. The letters can remain until the Bill is finalised, when it will need to be numbered, as will cross-references and notes.*
- The Part names and section headings are for local decision.*
- Other terms and provisions that require local decision are shown in the notes.*

**PART [VA] - VESSELS AND AIRCRAFT**

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**PART [BEP] – BIOSECURITY EXPORT PROCEDURES**

- BEP1. Biosecurity export inspection of outgoing articles
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- BEP3. Issue of sanitary and phytosanitary certificates
- BEP4. Biosecurity export specifications
- BEP5. Application for biosecurity export clearance
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**PART [BQ] – BIOSECURITY QUARANTINE**

- BQ1. Biosecurity quarantine of regulated articles
- BQ2. Biosecurity quarantine stations
- BQ3. Conditions of biosecurity quarantine
- BQ4. Management of biosecurity quarantine stations
- BQ5. Release from biosecurity quarantine
- BQ5A. Return to quarantine
- BQ6. Biosecurity quarantine notices
- BQ7. No imported animal or plant to be at large

**PART [PBO] – POWERS OF BIOSECURITY OFFICERS**

- PBO1. General rules as to exercise of powers
- PBO2. Entry, search and seizure
- PBO3. Inspection of documents
- PBO4. Inspection of articles
- PBO5. Detention of articles
- PBO6. Taking of samples
- PBO7. Testing of articles
- PBO8. Treatment of articles
- PBO9. Reconsignment of articles
- PBO10. Destruction of articles
- PBO11. Post mortem examination of an animal
- PBO11A. Quarantine seal and identification marks
- PBO12. Powers in relation to people

**PART [BIC] – BIOSECURITY INTERNAL CONTROL**

- BIC1. Biosecurity status surveys
- BIC2. Entry, search and seizure
- BIC3. Detention and testing of animals and plants and their products
- BIC4. Treatment or destruction of animals and plants and their products
- BIC5. Infested biosecurity controlled areas

- BIC6. Regulation of infested biosecurity controlled areas
- BIC7. Threat-free biosecurity controlled areas
- BIC8. Regulation of threat-free biosecurity controlled areas
- BIC8A. Control of movement between areas of [Jurisdiction]
- BIC9. Destruction of feral animals
- BIC10. Notifiable invasive species and pests
- BIC11. Beneficial organisms and biocontrol agents

**PART [BE] – BIOSECURITY EMERGENCIES**

- BE1. Declaration of a biosecurity emergency area
- BE2. Response to a biosecurity emergency
- BE3. Action in a biosecurity emergency area
- BE4. Biosecurity Emergency Regulations

**PART [DB] – THE DIRECTOR OF BIOSECURITY ETC.**

- DB1. Appointment of Director of Biosecurity
- DB2. Appointment of biosecurity officers
- DB3. Functions of the Director of Biosecurity
- DB4. Functions of the Council Committee and Governor
- DB4A. Directions
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- DB6. Biosecurity register and records
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**PART [Adm] - ADMINISTRATION OF THE ORDINANCE**

- Adm1. Outsourcing
- Adm2. Duty to coordinate
- Adm3. Facilities at biosecurity points of entry or departure
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**PART [OP] – OFFENCES AND PENALTIES**

- OP1. Owning, etc. prohibited imports
- OP2. Keeping, sale etc. of certain animals and plants
- OP3. Dereliction of duty by officers
- OP4. Obstruction, false information etc.
- OP5. Fraudulent use of official documents
- OP6. Maximum penalties
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**PART [MP] - MISCELLANEOUS PROVISIONS**

- MP1. Jurisdiction
- MP2. Abandoned goods
- MP3. Compensation
- MP4. Appeals from decisions
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- MP6. Evidence and language
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- MP8. Specifications
- MP9. Regulations
- MP10. Repeals and savings
- MP11. Transitional provisions
- MP12. Consequential amendments
- MP13. Amendment of Schedule

[Schedule Maximum penalties and fixed penalties]

**[JURISDICTION]**

*If a Schedule needed/wanted; see notes to clause [OP6]*

**BIOSECURITY BILL [2019]**

(Bill No. of 2019)

**A BILL**

FOR

AN Ordinance to prevent the entry of invasive species and of animal and plant pests into *[Jurisdiction]*; to prevent their establishment and control their spread in *[Jurisdiction]*; to regulate the movement of invasive species, of animal and plant pests and of animals and plants and their products; to facilitate international cooperation in respect of invasive species and of animal and plant pests; and to make ancillary and related provisions.

[Commencement: 20xx]

**ENACTED** by the Governor of *[Jurisdiction]* with the advice and consent of the [Legislative Council] of *[Jurisdiction]*.

**PART [Pre] - PRELIMINARY****Short title and commencement**

**Pre1.** (1) This Ordinance may be cited as the Biosecurity Ordinance [20xx].

*This will be the name of the Overseas Territory*

***Long title***

*This sets out the scope and general purpose of the Ordinance if enacted. It amounts to a statement of the Purpose of the Ordinance and can be significant when amendments come to be made.*

*Some jurisdictions will enact it as an Act, rather than an Ordinance, and the text will need to be changed accordingly*

*This, if needed, will be inserted before the Ordinance is Gazetted*

*This will use the local formula for the enacting clause*

***PART [Pre] – PRELIMINARY******Pre1: Short title and commencement***

*Subclause (1) is the short title, by which the Ordinance will be known. Other titles are possible, but the Ordinance will need to be readily found in an alphabetical index of laws. It is also desirable to use a similar title in all OTs if possible.*

(2) This Ordinance comes into operation on a day or days appointed by the Governor by notice in the *Gazette*.

*Subclause (2) is a common commencement provision among OTs, though the timing will be a matter for each OT. The power might be given to the Governor in Council (or a Minister) by order, or similar. For a complex Ordinance like this, where administrative implementation will be needed, a commencement date needs to be appointed rather than it coming into force on assent or Gazettal. The legislature can specify the date or fix a day by which the Ordinance should come into force. Different dates can be appointed for different provisions, but the Preliminary and some of the Miscellaneous provisions will be needed from the start.*

(3) The [Governor] may appoint different days for the coming into force of different provisions.

*Subclause (3) is needed if the power to split up the provisions is wanted, unless the Interpretation Ordinance so provides.*

### **Interpretation**

**Pre2.** (1) In this Ordinance, unless the context otherwise requires –  
“aircraft” means any conveyance that can be used in navigation by air;

“animal” means any mammal (other than a human), bird, amphibian, fish, reptile, invertebrate, 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 viscera 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;

### ***Pre2: Interpretation***

*Subclause (1) sets out a number of definitions. Terms that are defined in the local Interpretation Ordinance e.g. ‘Government’, ‘[Jurisdiction]’ and ‘Ordinance’ do not need defining in this Ordinance (unless it is desired to do so for clarity.) Note in particular the definitions of ‘biosecurity risk’ and terms used in that definition, ‘biosecurity assessment’ and ‘biosecurity threat’.*

- (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) the hide, skin, hair, feathers, shell, horns or hoof of an animal;
- (e) any product or biological preparation derived from any animal tissue or animal secretion;

“area” may include an island or a group of islands within [*Jurisdiction*], and a fixed oil rig;

“article” means a single unit of any goods;

“authorised” means duly authorised by the Governor, the Director, a biosecurity officer or a public officer for the purposes of this Ordinance;

“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;

“biosecurity” means the process of managing the risks posed by organisms to the economy, environment and human health through exclusion (the prevention of initial introduction of a species), mitigation, adaptation, control, and eradication;

“biosecurity approved premises” means premises approved under section [Adm6] for the inspection, testing and treatment of regulated articles;

“biosecurity authority” of a receiving country means the authority or officer in that country which administers its biosecurity laws;

*The term ‘area’ includes an island.*

*The Ordinance will apply to oil rigs: if fixed, they are included in ‘area’ and if towed, they can be included in ‘conveyance’.*



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

“biosecurity controlled area” means an infested biosecurity controlled area or a threat-free biosecurity controlled area designated under Part [BIC];

“biosecurity emergency” means the incursion or suspected incursion of a prohibited or restricted invasive species into an area of [*Jurisdiction*], or the infestation or suspected infestation by a prohibited or restricted pest in, any area of [*Jurisdiction*], 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 Ordinance are not otherwise adequate;

“biosecurity emergency area” means an area declared in response to a biosecurity emergency under section [BE1];

“biosecurity export declaration” means a declaration by an exporter of goods required pursuant to section [BEP1(2)];

“biosecurity functions of the Government” means the functions set out in section [Pre6];

“biosecurity import clearance” of an article means permission under section [BIP3] for the article or consignment to be removed from a biosecurity holding area;

“biosecurity import declaration” means a declaration by an importer of goods required pursuant to section [BIP1(2)];

“biosecurity measure” means the inspection, detention, quarantining, testing, treatment, re-consignment or destruction of a regulated article to eliminate or reduce the biosecurity threat presented by the article;

“biosecurity officer” means and includes –

- (a) the Director of Biosecurity and his or her deputy, if any;
- (b) in relation to animals and animal products, the [Senior Veterinary Officer] and his or her deputy, if any; and
- (c) any person [appointed/designated] as a biosecurity officer under section [DB2] or [BE3];

*The title of the SVO will be the local one.  
See notes to clause [DVI] as to designations*

“biosecurity port holding area” means an area designated under section [BBC4(1)] for the biosecurity inspection of incoming vessels or aircraft;

“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 prohibited or restricted invasive species or pest;

“biosecurity quarantine station” means a facility under the control of the Director of Biosecurity and designated under section [BQ2] for the performance of biosecurity quarantine, and includes a temporary biosecurity quarantine station;

“biosecurity register” means the register kept by the Director of Biosecurity under section [DB6];

“biosecurity risk” means the likelihood of the introduction, establishment or spread of an invasive species or of a pest which would adversely affect animals, plants, human health, the environment or economic activities, and the likely extent of such harm;

“biosecurity risk assessment” means the evaluation by a qualified person of biological or other scientific and economic evidence to determine whether an invasive species or a pest should be prohibited or restricted, and the nature of any biosecurity measures to be taken against it, including processes relating to the transport, establishment, abundance, spread, and impact of a species;

“biosecurity specifications” means biosecurity import specifications made under section [BIP4], or biosecurity export specifications made under section [BEP4];

“biosecurity threat” means the threat of harm being caused or adverse effects resulting to animals, plants, human health, the environment or economic activities as a result of the introduction, establishment or spread of a prohibited or restricted invasive species or pest;

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

“certificate” means a sanitary certificate or a phytosanitary certificate;

“compliance agreement” means an agreement between the Director of Biosecurity and another person as provided for in section [Adm4];

“consignment” means a quantity of goods which arrive in the same vessel or aircraft and which in accordance with this Ordinance 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;

*The term ‘container’ covers a large bulk container as used on ships and aircraft to a suitcase and even a paper bag.*

“contamination” means the presence in any item of a pest, or an invasive organism, not constituting an infestation, and “contaminate” is to be construed accordingly;

“controlled area” means an area declared under section [BIC5] to be an infested biosecurity controlled area;

“conveyance” means a ship, aircraft, vehicle or other means of transporting people, goods or animals from one location to another, while they are being used or prepared for such transport, and includes a towed oil rig;

“Council Committee” has the same meaning as in the Interpretation Ordinance;

“country” includes a territory or part of a country that administers its own biosecurity laws;

“country or area of origin” includes a re-exporting country or area;

“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;

“Deputy Director of Biosecurity” means the person designated as such under section [DB1];

“Director of Biosecurity” means-

- (a) the person designated as such under section [DB1];
- (b) any person for the time being performing the functions of Director of Biosecurity;
- (c) in respect of any particular function of the Director of Biosecurity, a person to whom the function has been delegated under section [DB5];

[and in respect of biosecurity decisions relating only to animals and animal products, means the Senior Veterinary Officer or his or her deputy;]

*Note that a ‘conveyance’ (which includes a vessel or aircraft) might be an article, if it is brought in for use or re-sale in the country.*

*If a jurisdiction has Ministries instead of Council Committees, the draft will need adapting accordingly.*

*The definitions of ‘Director’, ‘officer’ etc. will need to be adapted to refer to local requirements.  
The reference to the SVO is not needed if the Director has relevant qualifications.*

“Department” means the Department of the Government with responsibility for the administration of this Ordinance; and “Secretary” means the head of that Department;

*This might be a Ministry; the terminology will depend on local arrangements*

“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 (as to which see section [MP7(3)]);

*The term “document” might be defined in the Interpretation Ordinance.*

“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 removal of an entire population of an invasive species or of a pest within an area where re-colonisation is unlikely to occur;

“establishment”, in relation to an invasive species, or a pest, means the process whereby it forms a self-sustaining population over a period of time corresponding to multiple generations without direct intervention by people, or despite human intervention;

“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;

“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;

“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;

“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 an animal or plant, means that the animal or plant is diseased or may have been exposed to the risk of infection by disease during the preceding [6] months;

*A local decision is needed in respect of 'infected'.*

“infested”, in relation an item or area, means that there is present in the item or area a living pest;

“inspection”, in relation to an item, means an official examination of the item to determine if any invasive species or any pest is present in the item and whether in other respects the item conforms to the requirements of this Ordinance;

“introduction”, in relation to a species or organism, means the transport of it, through human or animal activity (intentionally or accidentally) to areas outside its potential range as defined by its natural dispersal mechanisms and biogeographical barriers; and “introduced” is to be construed accordingly;

“invasive species” means a species of plant or animal origin whose introduction or spread directly or indirectly threatens biological diversity, and includes –

- (a) any living stage of an insect, mite, nematode, snail, slug, or other invertebrate animal, bacteria, fungi, virus or similar organism; and
- (b) a weed pest, an insect pest, a noxious plant and a noxious insect;

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

“item” means any kind of moveable or immovable property or thing, including premises;

“licence” or “import licence” means an import licence issued under Part [BIP];

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

“notifiable”, in relation to an invasive species or pest, means that it is notifiable under section [BIC10] as posing a biosecurity risk;

*Whether a species that is being exported is ‘invasive’ will depend on its status in the receiving country.*

*The term ‘item’ is used to include buildings, while ‘article’ can mean any individual item of goods.*

*The alternative could be a ‘permit’ system. See Part [BIP]*

“OIE” means the Organisation Internationale Epizoötique or World Organisation for Animal Health;

“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 a species, of plant or animal origin, whose introduction and spread directly or indirectly causes disease, injury or damage to plants or animals, or to human and animal health, and includes –

- (a) any living stage of insect, mite, nematode, snail, slug, or other invertebrate animal, bacteria, fungi, virus or similar organism; and
- (b) a weed pest, an insect pest, a noxious plant and a noxious insect;

*This definition means that ‘disease’ does not need to be specifically mentioned elsewhere.*

*Note that ‘pest’ includes a noxious weed, which might also be an invasive species.*

“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 not an invasive species, is substantially free from plant pests 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, including a marine plant;

“plant material” means any unmanufactured material of plant origin, including grain;



“plant product” means –

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

“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 are not sufficient scientific data to support a refusal, as incorporated in Article 5.7 of the SPS Agreement;

*See clause [Pre5(4)] for the use of this term*

“premises” means any immovable property, other than land;

“prohibited export” means a regulated article the exportation of which is prohibited under section [BBC1(5)];

“prohibited import” means a regulated article the importation of which is prohibited under section [BBC1(1)];

“prohibited or restricted” in relation to an invasive species or a pest means its importation is prohibited under section [BBC1(5)] or restricted under section [BBC1(5)];

“re-exporting country”, in relation 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

[*Jurisdiction*], either by the vessel or aircraft on which it was imported or by another vessel or aircraft;

“regulated article” has the meaning given to that term in subsection (2);

*“regulated article” is a key term in the scheme and is quite broad*

“regulated consignment” means a consignment of regulated articles;

“repealed laws” means the Ordinances and subsidiary legislation repealed by section [MP10(1)];

“restricted export” means a regulated article the exportation of which is permitted under section [BIP1(7)] subject to conditions specified under section [BEP4];

“restricted import” means a regulated article the importation of which is permitted under section [BIP1(3)] subject to conditions specified under section [BIP4];

“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 animal product is not a non-native species, is substantially free from animal pests and in other respects meets the animal health import requirements of the receiving country; and
- (c) complies with relevant requirements of the SPS Agreement or the exporting country, as the case may be;

“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;

“specification” means a specification issued by the Director of Biosecurity under section [MP8];

*See clauses [BIP4] and [BEP4] for the key role of specifications, but note other uses also.*

“spread”, in relation to an invasive species or a pest, means the expansion of the geographical distribution of the species or pest within an area;

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

“status”, in relation to an invasive species or a pest, means its presence, absence, prevalence, incidence, distribution and occurrence in an area;

“technical section head” means the person (not being the Director of Biosecurity) who heads the department or section of the Government responsible for matters relevant to the issue in question, including, but not limited to, animal or plant health, fisheries, the environment, public health and land use;

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

“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 an invasive species or a pest 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 an invasive species or a pest, means that its presence is known, its distribution is limited and its further spread is controlled by the exercise of powers under this Ordinance;

“vehicle” includes a bicycle (whether motorised 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;

“waste” means waste material derived in whole or in part from plants, fruit, vegetables, meat or other plant or animal material, or other refuse of any kind that has been associated with any plants, fruits, vegetables, meat or other plant or animal material.

- (2) In this Ordinance, the term “regulated article” means –
- (a) any invasive species;
  - (b) any pest;
  - (c) any other animal or animal product;
  - (d) any other plant or plant product or material;
  - (e) any other living organism, whether modified or not;
  - (f) soil, sand gravel and aggregate;
  - (g) any genetic material;
  - (h) human remains;
  - (i) any host material;
  - (j) any clothing, machinery or other article that contains or has adhering to it anything mentioned in paragraph (c), (d), (e) or (f);
  - (k) garbage;
  - (l) any other article, substance, goods or thing declared by the Governor in Council by order under subsection (3) to be a regulated article for the purposes of this Ordinance.

*Wider than most Interpretation Ordinances*

*Wider than most Interpretation Ordinances*

*Subclause (2) defines ‘regulated article’ by means of a list. (Called ‘risk goods’ in some jurisdictions). It would include toiletries and any non-vegan food produce. Note that ‘animal’ does not include human remains, but they are included in ‘regulated goods’. Including invasive species and pests (which would also come under (c), (d) and (e) is to give meaning to the phrase ‘prohibited or restricted invasive species or pest’.*

(3) The Governor in Council, on the advice of the Director of Biosecurity, may by order declare any article, substance, goods or thing to be a regulated article for the purposes of this Ordinance.

### **Application of the Ordinance**

**Pre3.** (1) This Ordinance applies to every person in *[Jurisdiction]*, irrespective of the person's nationality or citizenship.

(2) This Ordinance applies to all conveyances, containers and goods while they are in *[Jurisdiction]*, including vessels and aircraft owned or operated by the government of a foreign country.

(a) This Ordinance applies to all property in *[Jurisdiction]*, including property owned or occupied by the government of a foreign country.

(3) This Ordinance applies to persons, conveyances, containers and goods outside *[Jurisdiction]* to the extent needed for its effective enforcement.

(4) For purposes of this Ordinance, ['Jurisdiction'] includes the territorial waters of *[Jurisdiction]*, as defined by the *[Jurisdiction]* (Territorial Sea) Order [xxxx] (SI yyyy).

### **Ordinance binds the Crown**

**Pre4.** This Ordinance binds the Crown, including every Government [Department] and statutory authority and every person in the employment of the Government.

*Subclause (3) gives the Governor in Council (or a Minister) power to declare additional regulated articles by order. This is to allow for changes in biosecurity risks in future.*

### ***Pre3: Application of the Ordinance***

*This says that the legislation applies to everyone in the Jurisdiction and on a ship or aircraft in the Jurisdiction. See also clause [Adm7] in relation to international co-operation, which could result in extraterritorial powers to inspect warehouses etc. overseas.*

*See the Interpretation Act for the definition of 'property' (or use 'premises' if defined.)*

*Subclause (4) needs completing, but might be in the Interpretation Ordinance.*

*The Ordinance does not extend to the EEZ.*

*Note that foreign government vessels, aircraft, passengers and goods will be subject to this legislation, unless excluded (there is no reason why they should be, except in respect of diplomatic premises etc – see clause [PBO1(8)(d)]. It might need an MOU or similar in respect of searching of military vessels and installations.*

### ***Pre4: Ordinance binds the Crown***

### **Responsibility for the Ordinance**

**Pre4A.** (1) The Governor must ensure that the biosecurity functions of the Government are performed, to the extent of the available resources and consistently with this Ordinance.

(2) The [Secretary] is responsible to the Governor for the efficient and effective running of the [Department].

(3) The Director of Biosecurity is responsible to the [Secretary] for the performance of the functions of the Director set out in section [DB3].

(4) The [Legislative Council] should ensure that sufficient funds are provided for the effective implementation of this Ordinance.

### **Biosecurity functions of the Government**

**Pre5.** (1) The biosecurity functions of the Government are to –

- (a) protect [Jurisdiction] against the entry of invasive species and of pests adversely affecting the economy, human health and the environment;
- (b) prevent the establishment and spread of invasive species and of pests and the release of organisms that might adversely affect the economy, human health and the environment;
- (c) eradicate, contain or control the movement of invasive species and of pests that are already present in [Jurisdiction];

*This says the Ordinance binds the Crown, i.e. the Government. Normally an Ordinance does not bind the Crown or Government unless expressed to do so (or the Interpretation Ordinance so provides.) It is appropriate for environmental and health laws to apply to the Government.*

*The phrase ‘Crown in right of [Jurisdiction]’ can be used if preferred*

### **Pre4A: Responsibility for the Ordinance**

*If wanted, this sets out the functions of various sections of the Government. This scheme might not be appropriate in every OT, especially if there is no Ministerial system, but is included for consideration. See also clause [DB4] for respective functions.*

### **Pre5: Biosecurity functions of the Government**

*This is a statement of the biosecurity functions of the Government of the Jurisdiction, and includes references to invasive species. It is in effect an extended definition of biosecurity and should guide all who operate under the Ordinance. An alternative approach is for these functions to be set out as functions of the Director (or other authority) in clause [DB3].*

- (d) contain the spread of invasive species and of pests by preventing incursions into new areas, and eradicating any species that are found outside a defined area;
- (e) carry out surveillance and monitoring of invasive species and of pests in *[Jurisdiction]* and assess their status;
- (f) facilitate the safe importation of animals and plants and their products, and related equipment and technology;
- (g) facilitate the export of animals and plants and their products in accordance with the biosecurity requirements of the receiving countries;
- (h) facilitate international cooperation to prevent the spread of invasive species and of pests affecting plants, animals, human health and the environment.

(3) The Government must seek to implement in *[Jurisdiction]* the international obligations of or applied to *[Jurisdiction]* in respect of biosecurity and biodiversity and international trade in animals and plants and their products.

(4) If a full risk assessment is not possible in any situation requiring an assessment of a biosecurity risk or threat, the precautionary principle may be applied.

(5) Action to contain a biosecurity threat must be taken as speedily as practicable, having regard to any requirement for technical advice or consultation contemplated by this Ordinance.

#### **Relationship with other written laws**

**Pre6.** (1) This Ordinance is in addition to and does not derogate from any other written law that it does not repeal. In particular, but without limiting this rule –

- (a) the notification requirements in section [VA1] relating to human health do not displace any other statutory requirement relating to such notification;

***Pre6: Relationship with other written laws**  
This sets out the relationship of this law to other legislation in the jurisdiction, including applied English laws (hence the term ‘written laws’.)*

- (b) the provisions of Part [VA] relating to biosecurity clearance and port quarantine of vessels and aircraft do not displace any other provisions relating to the arrival or departure, or the quarantining of vessels and aircraft and their passengers and crew;
- (c) the requirements relating to imports and exports in Parts [BIP] and [BEP] do not displace any other statutory requirements relating to imports and exports, fish and fish products, trade in endangered species, biosafety, biodiversity or environmental laws generally.

*It makes it clear that importers and others still need to comply with rules relating to customs, dangerous goods, pesticides, CITES etc.*

(2) This Ordinance does not remove or abridge any power or authority that a police officer or customs officer would have had if this Ordinance had not been enacted.

*Subclause (2) does not seek to displace other laws, but says that biosecurity must be taken into account in administering other laws.*

(3) This Ordinance does not displace any provision of an Order in Council applying to [Jurisdiction] and relating to the movement of ships in its territorial waters.

*Subclause (3) makes it clear that Territorial Sea Orders made by the Privy Council still apply in respect of ships in the waters of the territory.*

(4) To the extent of any inconsistency between this Ordinance and any other written law, every other written law must so far as possible be construed so as to fulfill the purpose of this Ordinance.

## **PART [BBC] – BIOSECURITY BORDER CONTROL**

## ***PART [BBC] – BIOSECURITY BORDER CONTROL***

*This Part sets out the principles of biosecurity border control by enabling prohibitions and restrictions to be imposed on the movement of invasive species and pests and regulated articles generally.*

*It enables the creation of a 'black list' of invasive species and pests, and a list of 'suspect' countries.*

### **Prohibited and restricted imports and exports**



**BBC1.** (1) The Governor in Council may by order declare the categories of regulated articles the importation of which is prohibited for all purposes (the ‘prohibited imports’ list).

(2) If a person knowingly imports or attempts to import a regulated article the importation of which is prohibited under subsection (1) –

- (a) the person commits an offence;
- (b) biosecurity import clearance under section [BIP3] will be refused for the article.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(3) The Governor in Council may by order declare the categories of regulated articles the importation of which is permitted subject to conditions specified by the Director of Biosecurity under section [BIP4] (the ‘restricted imports’ list).

(4) A person who knowingly imports or attempts to import a regulated article, the importation of which is restricted under subsection (2), in breach of the specified conditions of its import, commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months or both.

(5) The Governor in Council may by order declare the categories of regulated articles the exportation of which is prohibited for all purposes (the ‘prohibited exports’ list).

(6) A person who knowingly exports or attempts to export a regulated article, the exportation of which is prohibited under subsection (5), commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(7) The Governor in Council may by order declare the categories of regulated articles the exportation of which is permitted subject to conditions specified by the Director of Biosecurity under section [BEP4] (the ‘restricted exports’ list).

***BBC1: Prohibited and restricted imports and exports***

*This enables the Governor in Council (or a Minister) to declare by Order:*

- *Regulated articles that cannot be imported at all (Prohibited imports)*
- *Regulated articles that can only be imported on certain conditions (Restricted imports)*
- *Regulated articles that cannot be exported at all (Prohibited exports)*
- *Regulated articles that can only be exported subject to certain conditions (Restricted exports)*

*The section creates offences of knowingly importing or exporting prohibited or restricted regulated articles.*

*There is no compensation if a regulated article is confiscated because it becomes prohibited, as the importer/exporter should ascertain the position before shipping it.*

*See clauses [OP1 and 2] for offences of possessing, releasing etc. prohibited items.*

(8) A person who knowingly exports or attempts to export a regulated article, the exportation of which is restricted under subsection (6), in breach of the specified conditions of its export, commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months or both.

### **Prohibited countries of origin**

**BBC1A.** (1) The Governor in Council may, in an order under section [BBC1(1)], include regulated articles or categories of regulated articles from –

- (a) all countries or areas of origin; or
- (b) one or more particular countries or areas of origin,

if the importation would present an unacceptable biosecurity risk to [Jurisdiction].

(2) In making a decision under this section, the Governor in Council must –

- (a) have regard to the international obligations applying to [Jurisdiction] in respect of biosecurity and of trade in regulated articles;
- (a) not discriminate in an arbitrary and unjustifiable manner between countries where the same conditions prevail.

### **Requirements for making orders**

**BBC2.** (1) Before making an order under section [BBC1], the Governor in Council must –

- (a) obtain a biosecurity risk assessment in respect of the regulated article;
- (b) obtain the advice of the Director of Biosecurity and of technical section heads as appropriate;
- (c) provide individuals and bodies that have relevant expertise an opportunity to comment on a proposed order.

(2) An order under section [BBC1] may make different provision for different cases and, in particular, for different –

- (a) types of invasive species and pests;
- (b) circumstances or purposes;

### ***BBC1A Prohibited countries of origin***

*This enables the Governor in Council (or a Minister)) to declare by order the countries from which regulated articles must not be imported (i.e. put them on the prohibited imports list.)*

*The test is whether the importation would present an unacceptable biosecurity risk to the Jurisdiction.*

*The condition for the making of an order are the same as for an order under [BBC1].*

### ***BBC2:Requirements for making an order***

*This imposes some requirements for the making of orders under section [BBC1].*

- (c) times of the year; and
  - (d) areas or places.
- (3) An order under section [BBC1] in respect of a regulated article –
- (a) may be made at any time before biosecurity import clearance is granted in respect of an item;
  - (b) continues in force until the order is revoked or varied, but must be reviewed every [2 years].

*Subclause (3)(b) is for decision locally.*

### **Biosecurity points of entry and departure**

**BBC3.** (1) The Governor in Council may by order designate as biosecurity points of entry the seaports and airports at which regulated articles may enter *[Jurisdiction]*.

(2) Subject to subsection (8), a master or captain who causes or permits an incoming vessel or aircraft to berth or land except at a seaport or airport that is a biosecurity point of entry commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

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

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(4) The Governor in Council may by order designate as biosecurity points of departure the seaports and airports from which regulated articles may be exported.

(5) A master or captain who causes or permits a vessel or aircraft to leave *[Jurisdiction]* except from a seaport or airport that is a biosecurity point of departure commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

### ***BBC3: Biosecurity points of entry and departure***

*This enables the Governor in Council (or a Minister) to designate biosecurity points of entry such as seaports, airports and post offices. Landing of vessels or aircraft, or importing goods by other means, elsewhere will be an offence, unless in exceptional circumstances.*

*Similar rules apply in relation to points of departure and exports.*

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

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

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

- (a) constrained by adverse weather, mechanical failure or superior force; or
- (b) so directed or permitted by a biosecurity officer.

*Subclause (8) allows for landing elsewhere in an emergency, etc.*

(9) In the circumstances mentioned in subsection (8), 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 Ordinance, once the Director of Biosecurity has been notified of the berthing or landing.

(10) Before making an order under subsection (1) or (4) the Governor in Council must obtain the advice of the Director of Biosecurity and consult, as the case may be, the officers or authorities responsible for the movement of vessels and aircraft in [Jurisdiction].

(11) The seaports and airports designated under subsection (1) and the points of entry and departure designated under subsection (4) may be, but do not need to be, those designated for customs, immigration or other purposes under the relevant legislation.

*Although the section contemplates designation of biosecurity ports of entry and departure separate from those for customs and immigration and human quarantine, subclause (11) allows for them to be existing ports etc.*

#### **Designation of biosecurity holding areas**

**BBC4.** (1) The Governor in Council may by order designate –

BBC4: Designation of biosecurity holding areas

- (a) any territorial waters of *[Jurisdiction]* or any part of a seaport in *[Jurisdiction]* as a biosecurity port holding area for vessels;
- (b) any part of an airport in *[Jurisdiction]* 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 Ordinance.

(3) The Governor in Council may by order designate any area of land at or adjacent to a seaport 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 Ordinance.

(5) The Governor in Council may designate any part of a mail exchange 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 Ordinance.

(7) Before making an order under subsection (1), (3) or (5), the Governor in Council must obtain the advice of the Director of Biosecurity and consult the officers or authorities respectively responsible for the movement of vessels, aircraft and postal items in *[Jurisdiction]*.

(8) A mail exchange may only be designated as a biosecurity holding area in respect of regulated articles that at the time of entry or departure are in a mail bag or

*This enables the Governor in Council (or a Minister) to designate biosecurity holding areas at ports, airports and mail exchanges (i.e. post offices) for biosecurity clearance inspection of incoming and outgoing regulated articles. These can also be part of a holding area for customs purposes. Mail exchanges are included because mailbags often go direct to the sorting office where biosecurity inspection should take place for seeds etc. contained in the mail.*

other container that conforms to the requirements of the postal legislation of *[Jurisdiction]*.

(9) Regulated articles that arrive in or depart from *[Jurisdiction]* by courier, or are delivered to households or businesses by courier, are not postal items and are subject to the provisions of this Ordinance regarding regulated articles.

(10) Section [BIP3(11)] applies to designations under this section as it applies to designations under section [BIP3], with necessary modifications.

### **Management of biosecurity holding areas**

**BBC5.** (1) Sections [BQ2(3), BQ3 and BQ4] apply 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 a biosecurity officer or of the person in charge of the area.

(3) A person who –  
 (a) enters a biosecurity holding area without permission given under 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.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(4) 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 Ordinance, commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

### ***BBC5: Management of biosecurity holding areas***

*This provides that holding areas are to be managed in the same way as biosecurity quarantine areas, so as to prevent animals and plants leaving the area until they have been cleared.*

*In effect, holding areas are to be treated as quarantine stations, although the articles are not officially in quarantine.*

### **Biosecurity clearance agents**

**BBC6.** (1) A person who proposes to import or export regulated articles through a seaport or airport and who will not be present when biosecurity inspection is to take place must –

- (a) in writing appoint a person resident in *[Jurisdiction]* as a biosecurity clearance agent for the purposes of this Ordinance; and
- (b) notify the Director of Biosecurity 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 Ordinance if the Director of Biosecurity notifies the importer or exporter in writing that, in the opinion of the Director of Biosecurity, the agent's conduct in the performance of functions under this Ordinance renders the agent unacceptable for purposes of this Ordinance.

(3) Notice under subsection (2) must 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 Ordinance is liable to the same extent as the importer or exporter for any Ordinance or omission which amounts to an offence or which creates any legal obligation under this Ordinance.

(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 regulated consignment which the person seeks to import or export.

(6) Agents appointed under subsection (1) may be, but do not need to be, the same persons as are appointed as customs clearance agents under customs legislation.

### ***BBC6: Biosecurity clearance agents***

*This requires an importer or exporter of regulated articles to appoint a local agent if they will not be present at the time of importation or exportation. The agent can also be a customs agent.*

*The agent is responsible for documentation etc. in the Jurisdiction and is liable as importer or exporter.*

*Subclause (2) enables the Director to refuse to accept an agent who behaves inappropriately in terms of the Ordinance.*

## PART VA – VESSELS AND AIRCRAFT

### Biosecurity arrival declaration

- VA1.** (1) The master or captain of every vessel or aircraft destined for *[Jurisdiction]* must make to the Director of Biosecurity a biosecurity arrival declaration stating –
- (a) the destination seaport or airport in *[Jurisdiction]* 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 *[Jurisdiction]*;
  - (d) the nature and country or area of origin of its cargo;
  - (e) whether the cargo includes any regulated articles and if so their nature;
  - (f) the number of passengers and crew;
  - (g) the presence of any live animal or live plant on the vessel or aircraft;
  - (h) the nature of any illness or malady affecting any live animal, plant, crew member, passenger or other individual on board the vessel or aircraft;
  - (i) where and how the cargo was stored before being loaded onto the vessel or aircraft;
  - (j) whether the vessel or aircraft and its cargo has had any biosecurity inspection in another country before coming to *[Jurisdiction]*, and if so what inspection;
  - (k) any other matter relevant to facilitating biosecurity landing clearance of the vessel or aircraft that is

### *[VA] – VESSELS AND AIRCRAFT*

*This Part sets out the biosecurity rules for incoming and outgoing vessels and aircraft, in addition to any other rules about immigration, health, CITES, etc. It is intended to be consistent with IMO rules about the movement of vessels and ICAO rules about the movement of aircraft.*

### ***VA1: Biosecurity arrival declaration***

*This requires masters of vessels and captains of aircraft coming to the Jurisdiction to make a biosecurity declaration of passengers, crew and cargo. It can be made electronically, or by an agent, and combined with a customs or health declaration.*



specified by the Director of Biosecurity.

- (2) The declaration required by subsection (1) –
- (a) must be made as soon as practicable after the vessel or aircraft leaves its last port of call or airport before arriving in *[Jurisdiction]*, and in any event not less than [48 hours] (in the case of a vessel), or [2 hours] (in the case of an aircraft) before the estimated time of arrival;
  - (b) may be made by electronic means, in accordance with any directions given by the Director of Biosecurity;
  - (c) may be made through a biosecurity clearance agent;
  - (d) may be made in conjunction with or as part of a declaration made for customs or other border control purposes.

*A local decision is needed in respect of the times in subsection (2).*

- (3) A master or captain who fails to make a biosecurity arrival declaration, either directly or through a biosecurity clearance agent, commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

- (4) After consulting the civil aviation and maritime authorities, and technical section heads as appropriate, the Chief Biosecurity Officer may direct measures to be applied to or on a vessel or aircraft before it arrives in *[Jurisdiction]*, including (but not limited to) spraying with insecticide and showing a video film about biosecurity to crew and passengers.

### **Biosecurity landing clearance**

- VA2.** (1) The master or captain of every incoming vessel or aircraft must –
- (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 [PBO2], inspect any area of the vessel, including the hull, and apply any treatment to the vessel or aircraft that is directed under section [VA1(4)];

### ***VA2: Biosecurity landing clearance***

*Vessels and aircraft must obtain biosecurity landing clearance on arrival. Masters and captains must complete another form – the biosecurity arrival declaration – and permit the search of the vessel or aircraft. Until clearance is granted, no passengers or crew or cargo can be landed. The documents that can be asked for would not include*

- (c) provide to the officer the log, 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 requests for the purposes of this Ordinance;
- (d) complete an incoming conveyance biosecurity certificate, in a form approved by the Director of Biosecurity, certifying that all waste, meat or animal products and plants or plant material on board the vessel or aircraft will be lawfully disposed of, and that all live animals will be lawfully disembarked;

*e.g. technical specifications of the vessel etc.  
Under clause [VA1(4)] the treatment required might involve disinfection by aerosol or similar.  
The term 'waste' is defined in clause Pre2(1).*

- (2) After inspecting relevant documents and conducting any necessary search of an incoming vessel or aircraft, and if satisfied that the vessel or aircraft –
- (a) does not have on board any prohibited or restricted invasive species;
  - (b) is not infected or infested with a prohibited or restricted pest; and
  - (b) does not have on board any regulated article that might pose a biosecurity threat to *[Jurisdiction]*,

and that any prescribed fee 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 Ordinance.

(4) Biosecurity landing clearance must be refused if a biosecurity officer orders the vessel or aircraft into port quarantine pursuant to section [VA3(2)].

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

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(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.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(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.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

### **Bonding requirement**

**VA2A.** (1) 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 approved by the Director of Biosecurity, by the master of the vessel or captain of the aircraft, for compliance with any requirements imposed pursuant to this Ordinance in respect of the vessel or aircraft or its cargo.

[(2) Without affecting subsection (1), the master of an incoming vessel or captain of an incoming aircraft which has on board a live animal for which no permission has been granted to remain in [Jurisdiction], including any ship's pet, must execute a bond with the Government in the amount of [£xx,000] to ensure that the animal is on board the vessel or aircraft when it leaves [Jurisdiction].]

(3) The amount of any bond entered into pursuant to this section must be reimbursed upon confirmation that the condition of the bond has been complied with.

### **Biosecurity port quarantine of vessels and aircraft**

**VA3.** (1) The Governor in Council may by order designate –

- (a) any territorial waters of [Jurisdiction] or any part of a seaport in [Jurisdiction] as a biosecurity port quarantine area for vessels;
- (b) any part of an airport in [Jurisdiction] as a biosecurity port quarantine area for aircraft.

### ***VA2A: Bonding requirement***

*Under this section a bond may be taken for due performance of any requirements by a vessel or aircraft.*

*Subclause (2) requires a local decision whether to include the clause and if so, the amount of the bond.*

### ***VA3: Biosecurity port quarantine of vessels and aircraft***

*This enables the Governor in Council (or a Minister) to designate areas for biosecurity port quarantine and provides that an incoming vessel or aircraft can be*

(2) Before making an order under subsection (1) the Governor in Council must obtain the advice of the Director of Biosecurity and consult, as the case may be, the officers or authorities responsible for the movement of vessels and aircraft in *[Jurisdiction]*.

*ordered into biosecurity quarantine before clearance is granted.*

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

- (a) has on board any prohibited or restricted invasive species
- (b) is infected or infested with a prohibited or restricted pest; or
- (c) has on board any regulated article that might pose a biosecurity threat to *[Jurisdiction]*,

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

(4) 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.

(5) 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.

(6) The owner or charterer and master or captain must 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.

(7) If the Director of Biosecurity reasonably believes that a vessel or aircraft poses a serious biosecurity threat to *[Jurisdiction]* which cannot adequately be dealt with by appropriate biosecurity measures, the Director of Biosecurity may in writing direct the vessel or aircraft to leave *[Jurisdiction]*.

(8) Before issuing a direction under this section, the Director of Biosecurity must consult, as the case may be, the officers or authorities responsible for the movement of vessels or aircraft in *[Jurisdiction]*.

#### **Management of biosecurity port quarantine areas**

**VA4.** (1) Sections [BQ2(3), BQ3 and BQ4] apply to biosecurity port quarantine 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 port quarantine area without the written permission of the Director of Biosecurity or of the person in charge of the area.

(3) 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.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(4) A biosecurity officer may affix a notice at any biosecurity port

#### ***VA4: Management of biosecurity port quarantine areas***

*This provides for the management of biosecurity port quarantine areas, similar to the provisions relating to biosecurity quarantine stations.*

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 of Biosecurity under section [BIP4].

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

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

#### **Conduct of vessels and aircraft in biosecurity port quarantine**

**VA5.** (1) The Director of Biosecurity may give written directions to the master of a vessel or captain of an aircraft in biosecurity port quarantine as to –

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

(2) The cost of keeping a vessel or aircraft in biosecurity port quarantine, and of any treatment or other measures that must be applied to it, is to be borne by the owner or charterer.

(3) 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.

(4) 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.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

#### ***VA5: Conduct of vessels and aircraft in biosecurity port quarantine***

*This sets out rules of conduct for vessels and aircraft in biosecurity port quarantine; rules relating to goods in quarantine are contained in Part [BQ].*

### **Biosecurity port quarantine clearance of vessels and aircraft**

**VA6.** (1) If satisfied that –

- (a) a vessel or aircraft in biosecurity port quarantine, including its cargo, does not have on board any prohibited or restricted invasive species and is free from prohibited or restricted pests;
- (b) any potential biosecurity risk from ships' stores and other regulated articles on the vessel or aircraft is suitably contained; and
- (c) 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) Section [VA2A(1)] applies to the taking of a bond in respect of biosecurity port quarantine clearance as it applies in respect of biosecurity landing clearance.

(3) Biosecurity port quarantine clearance of a vessel or aircraft has the same effect as biosecurity landing clearance granted under section [VA2].

### **Outgoing vessels and aircraft**

**VA7.** (1) If a biosecurity officer has reason to believe that there is on board an outgoing vessel or aircraft any prohibited export, or any regulated article that requires biosecurity export clearance pursuant to section [BEP2] and that has not been cleared, the officer may –

- (a) board and search the vessel or aircraft in accordance with section [PBO2(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 Ordinance;
- (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;

### ***VA6: Biosecurity port quarantine clearance of vessels and aircraft***

*A vessel or aircraft that has been in biosecurity port quarantine must obtain biosecurity port quarantine clearance before landing passengers or cargo. The section does not use the term 'pratique' or 'permission to land' as used in some quarantine legislation, but the effect is the same.*

*Subclause (2) means a bond can be taken in respect of port quarantine in the same way as in respect of landing under section [VA2A].*

### ***VA7: Outgoing vessels and aircraft***

*This relates to outgoing vessels and aircraft, and has similar provisions about biosecurity inspection etc. to protect destination countries. Masters and captains of outgoing vessels and aircraft must cooperate with a biosecurity officer who has reason to suspect there might be on board uncleared regulated articles that require clearance.*

- (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 under section [OP4].

### **Environmental obligations of masters and captains**

**VA8.** (1) The master of every incoming vessel must, while the vessel is in [Jurisdiction] –

- (a) take all necessary steps to prevent any live animal on board the vessel from disembarking unless permitted by a biosecurity officer, and then only as directed by the officer;
- (b) seal all hatches and holds and enclosed 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 must take all reasonable steps to ensure that no –

- (a) waste containing any animal, plant, animal product or plant product;
- (b) bilge water, sewage or foul wastewater,
- (c) ballast,

is discharged from the vessel into the sea while the vessel is in [Jurisdiction].

(3) The master of every incoming vessel and captain of every incoming aircraft must, while the vessel or aircraft is in [Jurisdiction], take all reasonable steps to ensure that –

### ***VA8: Environmental obligations of masters and captains***

*This imposes on masters and captains of all vessels and aircraft that come into the Jurisdiction obligations with regard to securing the vessel to prevent environmental damage as well as biosecurity risks. There are limitations on the discharge of garbage and ballast water from vessels within the Jurisdiction waters. These provisions are in line with various international pollution conventions.*



- (a) all waste 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) the waste 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.

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

- (5) A master who -
- (a) contravenes subsection (1)(b);
  - (b) fails to take all reasonable steps as required by subsection (1)(a), (2), (3) or (4); or
  - (c) fails to obey a direction of a biosecurity officer given under any of those subsections,

commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(6) A captain who fails to take all reasonable steps as required by subsection (3) or (4) or fails to obey a direction of a biosecurity officer given under either of those subsections commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

- (7) (a) Ballast of a vessel must not be discharged within the territorial waters of *[Jurisdiction]*.
- (b) A person who discharges ballast in contravention of this subsection commits an offence.

Penalty: A fine of [£xxxx] or imprisonment for [yyy] months

- (8) A biosecurity officer may lock or seal the stores of any incoming vessel or aircraft while it is in *[Jurisdiction]*.
- (9) The cost of disposal of waste under this section is to be borne by the owner or charterer of the vessel or aircraft.
- (10) An incoming vessel must comply with any de-ratting requirements required in writing by the Director of Biosecurity.
- (11) The obligations under this section are in addition to and do not limit the obligations of the masters of vessels under –
- (a) the International Convention for the Prevention of Pollution from Ships, 1973 as modified (‘MARPOL’);
  - (b) the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004; or
  - (c) any other written law,
- in respect of discharges from a vessel into the territorial waters of *[Jurisdiction]*.

### **Passengers and crew members**

**VA9.** (1) Subject to subsections (2) and (3), every passenger or crew member who arrives in *[Jurisdiction]* on board a vessel or aircraft must make to a biosecurity officer a passenger arrival biosecurity declaration.

(2) The passenger arrival biosecurity declaration must be in a form approved by the Director of Biosecurity and contain all required particulars relating to the person and any baggage that accompanies the person.

- (3) A passenger or crew member does not need to declare on the form –
- (a) articles of clothing worn on the body;
  - (b) articles visibly attached or connected to the body or clothing; or

### ***VA9: Passengers and crew members***

*This sets out the procedure for incoming passengers and crew members. They must make a passenger declaration and submit their baggage to inspection. The passenger declaration is not the same as an import declaration as it covers all baggage, not just regulated articles.*

*The particulars will be as required by the Director in the approved form. Regulated articles in personal baggage will require biosecurity import clearance like any other cargo.*

(c) a suitcase or other visible container of personal baggage, unless a biosecurity officer so requests because of the biosecurity risk posed by the item. In the absence of any such request, the article or container (but not the contents of any container) is deemed to have biosecurity entry clearance.

(4) 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. *Subsection (4) as to the age of family members needs a local decision.*

(5) 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.

(6) After taking the steps in subsection (5), 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.

(7) An arriving passenger or crew member who fails to –

- (a) make a declaration as required by subsection (1); or
- (b) submit baggage for inspection when so directed under subsection (5),

commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(8) Every passenger or crew member departing from *[Jurisdiction]* must –

- (a) submit for inspection on request by a biosecurity officer any regulated article on the person or in the person's baggage; an
- (b) permit the officer to search the person's baggage.

(9) A departing passenger or crew member who fails to comply with subsection (8) commits an offence under section [OP4].

(10) Section [PBO12] [*Powers in relation to people*] applies to the questioning, detention and searching of persons and baggage under this section.

## **PART [BIP] – BIOSECURITY IMPORT PROCEDURES**

### **Biosecurity entry inspection of incoming articles**

**BIP1.** (1) A biosecurity officer at a biosecurity point of entry may inspect every incoming article or consignment of articles to ascertain whether it is a prohibited import, or is or includes any other regulated article.

(2) Containers of imported regulated articles presented for biosecurity clearance must be plainly and correctly marked to indicate the country of origin, the name and address of the shipper and the name and address of the consignee and the contents of the containers.

(3) Animals must be identified in their scientific name by genus and species in both the application to import and in the international animal health certificate.

(4) A biosecurity officer may require an importer of goods to complete in respect of each consignment a biosecurity import declaration, in a form approved by the Director of Biosecurity, stating –

## ***PART [BIP] – BIOSECURITY IMPORT PROCEDURES***

*This Part establishes a régime for the control of incoming goods once they have been landed from a vessel or aircraft.*

### ***BIP1: Biosecurity entry inspection of incoming articles***

*Under this, incoming goods will be liable to entry inspection at the point of entry to ascertain whether they are regulated.*

*All imports must be clearly marked as required by subclause (2)*

*Importers can be required to complete a form showing whether there are any regulated articles in the goods. This creates a document trail to aid in identifying such articles.*

- (a) the nature and quantity of the goods;
  - (b) whether they are or include a regulated article.
- (5) An importer of goods who –
- (a) fails to make an import declaration when required to do so by a biosecurity officer; or
  - (b) makes a false biosecurity import declaration, commits an offence under section [OP4].
- (6) 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 under section [OP4]; and
  - (b) the goods may be reconsigned or destroyed as if they were a regulated article for which biosecurity entry clearance had been refused.
- (7) If, after inspecting an incoming article or consignment, a biosecurity officer is satisfied that it –
- (a) is or includes a regulated article - the following provisions of this Part apply to it;
  - (b) is not and 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.
- (8) 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 (6)(b) applies to it.
- (9) Section [PBO4] (*Inspection of articles*) applies to an inspection under this section.

(10) Subject to section [MP4] (*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 Ordinance.

(11) This section does not apply in respect of baggage accompanying passengers or crew members, but section [VA9] applies to such baggage.

**Biosecurity import clearance of regulated articles**

**BIP2.** (1) Every incoming regulated article or consignment of regulated articles –

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

(2) An application for biosecurity import clearance of a regulated article or consignment must –

- (a) be made to a biosecurity officer in a form approved by the Director of Biosecurity;
- (b) be accompanied by the prescribed fee, if any;
- (c) state the country or area of origin of the article or consignment;
- (d) state the nature and quantity of the article or consignment;
- (e) attach any sanitary or phytosanitary certificate issued by the country or area of origin in relation to the article or consignment;
- (f) attach any biosecurity import licence relating to the document;
- (g) attach documentation relating to any other biosecurity measures specified under section [BIP4(1)] in relation to the article or consignment.

***BIP2: Biosecurity import clearance of regulated articles***

*If there are any regulated articles, they will require biosecurity import clearance.*

*They will be liable to biosecurity inspection at a holding area and their import must be declared.*

- (3) The importer of a regulated article or regulated consignment must 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 [PBO4];
  - (c) allow the officer to take samples and conduct tests in accordance with [Part PBO] 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 regulated 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.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(6) This section does not apply to passengers or crew members, but section [VA9] applies to such persons.

### **Grant and refusal of biosecurity import clearance**

**BIP3.** (1) Before granting biosecurity import clearance of an article or consignment, a biosecurity officer must be satisfied that the article is not a prohibited

*BIP3: Grant and refusal of biosecurity import clearance*

import and meets the biosecurity import requirements in relation to it specified under section [BIP4], that is to

say –

- (a) if a biosecurity import licence is required - it has been obtained in respect of the article or consignment and the conditions of the licence 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 or area of origin, and any requirement in it complied with;
- (c) if any other biosecurity measures are specified - they have been applied to or 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 must 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, infected, infested or contaminated.

*This sets out the matters on which a biosecurity officer must be satisfied before biosecurity import clearance can be granted. The requirements (based on specifications made under [BIP4]) may include 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.*

*Under subclause (3) import clearance can be refused even if the article has relevant documentation, if the biosecurity risk so justifies.*



(5) Biosecurity import clearance must 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 must be given reasonable time to make arrangements for reconsignment of the article or consignment before it is destroyed.

(7) Once a regulated article is given biosecurity clearance, a biosecurity officer must in writing advise the importer or agent, the [Head of Customs, the Harbour Master and/or the Postmaster,] as the case may be, that the regulated article may be released to the importer or the owner or agent.

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

### **Biosecurity import specifications**

**BIP4.** (1) The Director of Biosecurity may specify in respect of incoming regulated articles –

- (a) whether a sanitary or phytosanitary certificate from the biosecurity authority in the country or area of origin is required for an article and if so the matters that must be certified;
- (b) whether a biosecurity import licence must be obtained for the article and if so the conditions to be attached to the licence;
- (c) what biosecurity measures, if any, must be applied to the article on arrival in [Jurisdiction] before biosecurity import clearance can be granted.

*Alternative:* (1) A licence for the import of any regulated article or consignment is required, unless specifications issued by the Director of Biosecurity otherwise provide.

*In subclause (7) local terms are needed*

### ***BIP4: Biosecurity import specifications***

*This section is a key provision in the legislative scheme. It enables the Director to specify the requirements for importing various classes of regulated articles.*

*The requirements can be for a sanitary or phytosanitary certificate from the exporting country, for an import permit (or licence), for biosecurity measures to be imposed, or for all three.*

*Specifications can be in the form of import health standards, or similar.*

*Alternative subclauses (1) and (1A) require a licence for all imports of regulated articles, but that is a matter*

(1A) The Director of Biosecurity may specify in respect of incoming regulated articles the conditions to be attached to a licence required under subsection (1), including –

- (a) whether a sanitary or phytosanitary certificate from the biosecurity authority in the country or area of origin is required for an article, and if so the matters that must be certified;
- (b) what biosecurity measures, if any, must be applied to the article on arrival in *[Jurisdiction]* before biosecurity import clearance can be granted.

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(2) Specifications under subsection (1)*[Or 1A]* –

- (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) must only be those reasonably necessary to reduce or eliminate the biosecurity risk to *[Jurisdiction]* presented by the article;
- (d) may be in the form and use wording of import health standards.

(3) Before issuing a specification under subsection (1), the Director of Biosecurity must –

- (a) make a biosecurity risk assessment;
- (b) have regard to the requirements of the SPS Agreement or the OIE standards respectively, and other international standards relating to biosecurity matters;
- (c) have regard to the resources available for biosecurity control;
- (d) consult technical section heads as appropriate;

*for local decision. The subclause could say that no licence is required unless so specified and (1A) would be omitted, or a licence could be left as a condition to be specified.*

*The term ‘permit’ could be used instead of ‘licence’ throughout this Part.*

*Under subclause (3), the specifications must be based on international standards as incorporated in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), but the Director may apply the precautionary principle under section [Pre5(4)].*

*Specifications may be by reference to the type of article or to the country of origin. As defined in section [Pre2], ‘country or area of origin’ includes a re-exporting*

- (e) if time permits, provide individuals and bodies that have relevant expertise an opportunity to comment on a proposed specification.

(4) The biosecurity risk assessment needed for making a specification under this section –

- (a) may be performed by any qualified person (other than the importer) at the request of the Director of Biosecurity;  
 (b) is performed at the importer's expense.

(5) 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.

(6) 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.

(7) Subsection (4) applies to the changing of a specification as it applies to the making of a specification.

(8) The Director of Biosecurity may specify as a condition of entry into *[Jurisdiction]* a period of quarantine at an approved quarantine facility located outside *[Jurisdiction]* where plants or animals are screened for invasive species and pests prior to entry into *[Jurisdiction]*.

### **Biosecurity access arrangements**

**BIP5.** (1) A person proposing to import a regulated article of a type that is not the subject of a biosecurity import specification must apply in writing to the Director of Biosecurity for a specification under section [BIP4] in respect of the article.

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

*country or area.*

*Clause [MP8] governs the publication, etc. of specifications. They do not need to be Gazetted, but should be published in the biosecurity register, and will be admissible in evidence under section [MP6].*

*Subclause (8) enables quarantine to be performed overseas.*

### ***BIP5: Biosecurity access arrangements***

*If there are no specifications relating to the import of a regulated article, the intending importer must apply for an access arrangement before importing the article. The application should be made in time for the Director*

- (a) be made in sufficient time before the intended importation; and
- (b) give adequate information about the biosecurity procedures of the country or area of origin, the nature of the article and the proposed importation,

to enable the Director of Biosecurity 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 of Biosecurity must as soon as practicable, unless the article is or becomes a prohibited import, make a specification in respect of it in accordance with section [BIP4].

(4) Section [BIP4(2), (3) and (4)] apply to the making of a specification under this section.

#### **Application for a biosecurity import licence**

**BIP6.** (1) If a biosecurity import licence is required under section [BIP4(1)] in respect of a regulated article or consignment, an application for a licence must be –

- (a) made before the article or consignment leaves the country or area of origin or, in the case of re-exported goods, the re-exporting country;
- (b) made to the Director of Biosecurity in a form approved by the Director of Biosecurity; and
- (c) accompanied by the prescribed fee, if any.

(2) An application for a biosecurity import licence must –

- (a) include evidence of the country or area of origin of the regulated article or regulated consignment;
- (b) state the nature and amount of the article or consignment;
- (c) state the expected date of arrival in [Jurisdiction]; and

*to be satisfied as to the biosecurity rules and standards of the exporting country.*

*If no specifications are made under this section, the article cannot be imported.*

#### ***BIP6: Application for a biosecurity import licence***

*This provides that if an import licence is required for an article, the importer must apply for a licence before the goods leave the exporting country, and sets out what the application should include. This and clauses [BIP7] and [BIP8] can be omitted if there is no plan to have a licensing regime for any imports of regulated articles.*

- (d) give any other information the Director of Biosecurity reasonably requires to make a biosecurity risk assessment.

(3) A decision on an application for a biosecurity import licence must 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 licence, because the proposed import would pose an unacceptable biosecurity risk, the applicant must be notified in writing, with brief reasons.

#### **Issue of a biosecurity import licence**

**BIP7.** (1) If satisfied of the matters set out in section [BIP6(1) and (2)], that the proposed import would not pose an unacceptable biosecurity risk, and that any prescribed fee has been paid, the Director of Biosecurity must as soon as practicable issue a biosecurity import licence.

(2) Before issuing, revoking or amending a biosecurity import licence the Director of Biosecurity must –

- (a) make a biosecurity risk assessment;
- (b) have regard to the resources available for biosecurity control;
- (c) consult technical section heads as appropriate.

(3) The form of a biosecurity import licence is as approved by the Director of Biosecurity.

(4) A biosecurity import licence 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 or areas of origin.

#### ***BIP7: Issue of a biosecurity import licence***

*This enables a biosecurity officer to issue an import licence if satisfied that the requirements are met.*

*The form will be approved by the Director and does not need to be prescribed or specified.*

*Licences can relate to individual articles, or consignments, or to periods of time.*

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

#### **Revocation or variation of a biosecurity import licence**

**BIP8.** (1) The Director of Biosecurity may at any time, on written notice to the holder of a biosecurity import licence, revoke the licence, or vary the conditions of the licence, if a change in the biosecurity risk to *[Jurisdiction]* presented by the article or consignment to which the licence relates so requires.

(2) Biosecurity import clearance must be refused for an article or consignment in respect of which a biosecurity import licence is revoked, but section [BIP4(5)] applies to a revocation as it does to the change of a biosecurity specification.

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

(4) A person who contravenes subsection (3) commits an offence.  
Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

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

#### **Exemption from biosecurity import requirements**

**BIP9.** (1) The Director of Biosecurity may in writing exempt any regulated article, class of regulated articles or regulated consignment from –

- (a) any or all of the biosecurity import specifications that would otherwise apply to the article or class of articles;
- (b) a requirement for a biosecurity import licence that would otherwise apply to the article or consignment.

#### ***BIP8: Revocation of a biosecurity import licence***

*This provides for the revocation or variation of an import licence. This power might be needed if the risk from a pest suddenly increases. It can be used before goods arrive or at the port or airport or after arrival.*

#### ***BIP9: Exemption from biosecurity import requirements***

*This gives the Director power to exempt regulated articles from complying with specifications or from needing an import licence. The exemption must be in writing and based on technical advice. This allows for certain categories of regulated articles to be exempted from the requirement for an import*

- (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 of Biosecurity may only grant an exemption under subsection (1) after consulting technical section heads as appropriate, and if satisfied that the biosecurity risk to *[Jurisdiction]* is not increased as a result.
- (5) A request for exemption under this section must be –
- (a) made in writing to the Director of Biosecurity;
  - (b) accompanied by any prescribed fee, and any documents the Director of Biosecurity reasonably requires;
  - (c) made in sufficient time to allow the Director of Biosecurity to give due consideration to the request.
- (6) Articles exempted from biosecurity import specifications or the requirement for an import licence under this section are not exempt from the requirement for biosecurity import clearance.
- (7) Official importations of regulated articles by the Government of *[Jurisdiction]* may be exempt from the requirement of a fee but require an import licence issued by the Director of Biosecurity and are subject to the conditions of the licence.
- (8) Without limiting subsection (7), a licence may be issued without a fee in respect of any plant or animal required to be imported or introduced into *[Jurisdiction]* for the purpose of –
- (a) research or experiment to improve the quality of plants or animals in *[Jurisdiction]* and the products to be derived from them; or

*licence (and thus the fee) e.g. items for scientific research or for schools. They would still be subject to biosecurity control, however, and conditions can be imposed on their import.*

*Subclause (7) only applies if there is a licensing regime.*

- (b) any botanical or zoological garden or display approved by the [Governor/Secretary].

*Subclause (8)(b) requires a decision as to who has the relevant power.*

### **Articles and passengers in transit**

**BIP10.** (1) Regulated articles that have arrived in [Jurisdiction] but that are not intended for importation –

- (a) are liable to biosecurity import control, and require biosecurity import clearance at a biosecurity holding area;
- (b) must be clearly identified as such, with the country of origin stated on the accompanying certification.

### ***BIP10: Articles and passengers in transit***

*Articles in transit are governed by this section, which enables the requirement for a permit to be waived, if there is no biosecurity threat to the Jurisdiction. This would apply to goods going from one port to another. Such goods are however still subject to biosecurity control.*

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

(3) The Director of Biosecurity may only grant a waiver under subsection (1) after consulting technical section heads as appropriate, and if satisfied that the biosecurity risk to [Jurisdiction] is not increased as a result.

(4) If a waiver is granted under subsection (2), the Director of Biosecurity may attach conditions to the waiver.

(5) A person who –

- (a) deals with articles to which this section applies other than by way of transit; or
- (b) contravenes a condition attached under subsection (4) in relation to them,

commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(6) A request for a waiver under this section must be –



- (a) made in writing to the Director of Biosecurity;
- (b) accompanied by any prescribed fee, and any documents the Director of Biosecurity reasonably requires;
- (c) made in sufficient time to allow the Director of Biosecurity to give due consideration to the request.

(7) 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.

(8) 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 *[Jurisdiction]* or a receiving country.

(9) A person in charge of an article in transit who refuses to comply with a request for inspection under subsection (8) commits an offence under section [OP4].

## **PART [BEP] – BIOSECURITY EXPORT PROCEDURES**

### **Biosecurity export inspection of outgoing articles**

**BEP1.** (1) A biosecurity officer may inspect every outgoing regulated article or regulated consignment at the biosecurity point of departure in order –

- (a) to ascertain whether it is a prohibited export, or is or includes an article that requires biosecurity export clearance pursuant to section [BEP2];

## ***PART [BEP] – BIOSECURITY EXPORT PROCEDURES***

*This sets out the controls over regulated articles intended for export.*

### ***BEP1: Biosecurity export inspection of outgoing articles***

*All outgoing regulated articles are liable to biosecurity export inspection to ascertain whether they require biosecurity export clearance.*

- (b) if it requires biosecurity export clearance - to decide whether to grant clearance under section [BEP6].

(2) A biosecurity officer may require an exporter of goods to complete in respect of each consignment a biosecurity export declaration, in a form approved by the Director of Biosecurity, stating –

*Under subclause (2) a biosecurity export declaration can be required similar to the form in [BIP1].*

- (a) the nature and quantity of the goods;
- (b) whether they are regulated articles or include a regulated article.

(3) An exporter of goods who –

- (a) fails to make a biosecurity export declaration when required to do so by a biosecurity officer; or
- (b) makes a false biosecurity export declaration,

commits an offence under section [OP4].

(4) 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 prohibited export, or an article that requires biosecurity export clearance pursuant to section [BEP2].

(5) 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 under section [OP4].

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

- (a) is or includes a prohibited export - it will be subject to the provisions of Part [PBO] relating to destruction or reconsignment;
- (b) requires biosecurity export clearance - the provisions of this Part apply to it.

(7) If the biosecurity officer is satisfied that subsection (6) does not apply, the article or consignment may be released from the biosecurity point of departure upon payment of the prescribed fee, if any.

(8) Section [PBO4] applies to an inspection under this section.

(9) This section does not apply in respect of baggage accompanying passengers or crew members, unless a biosecurity officer has reason to suspect that such baggage is or includes a prohibited export.

#### **Requirement for biosecurity export clearance**

**BEP2.** (1) A regulated 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 [BEP4(1)] before being exported to that country,

must have biosecurity export clearance for export to that country.

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

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

#### **Issue of sanitary and phytosanitary certificates**

**BEP3.** (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 must –

- (a) apply to the Director of Biosecurity 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.

#### ***BEP2: Requirement for biosecurity export clearance***

*Regulated articles will require biosecurity export clearance if a sanitary or phytosanitary certificate is required by the receiving country, or if biosecurity measures need to be applied before the article is exported.*

#### ***BEP3: Issue of sanitary and phytosanitary certificates***

*This sets out how a sanitary or phytosanitary (SPS) certificate can be obtained. It also requires the Director to keep a record of the SPS requirements of receiving countries.*

(2) Upon receipt of an application under subsection (1), the Director of Biosecurity must –

- (a) ascertain the biosecurity certification requirements of the receiving country, through the applicant or directly from the country;
- (b) perform appropriate inspection and apply appropriate biosecurity measures to the article 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) The functions of the Director of Biosecurity under this section in relation to sanitary certificates must be performed by or under the supervision of the [Senior Veterinary Officer].

*Subclause (3) can be omitted if the Director of biosecurity has qualifications relating to animals and animal products. The title of the SVO will be the local one.*

(4) A sanitary or phytosanitary certificate in respect of a regulated article will only be issued after inspection of the article performed at the request and cost of the exporter.

(5) A phytosanitary certificate will be issued only for plants or plant material produced in [*Jurisdiction*].

(6) The issue of a certificate does not release the exporter from compliance with any biosecurity import requirements of the destination country to which the regulated articles are consigned.

### **Biosecurity export specifications**

**BEP4.** (1) The Director of Biosecurity 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 must be applied to the animal, plant or product before export.

***BEP4: Biosecurity export specifications***  
*This enables the Director to specify the requirements for exporting regulated articles, whether or not a certificate is required by the receiving country. This is to ensure*

- (2) Specifications under subsection (1) may only be made if required by –
- (a) an international agreement to which *[Jurisdiction]* and the receiving country are party in respect of the movement of animals or plants or their products;
  - (b) a bilateral agreement in that respect with the receiving country made pursuant to section *[Adm9]*,
- and must 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.

(4) Before making or changing a specification under this section, the Director of Biosecurity must consult technical section heads as appropriate.

#### **Application for biosecurity export clearance**

**BEP5.** (1) An application for biosecurity export clearance of an article or consignment that requires biosecurity export clearance must be made to a biosecurity officer in a manner approved by the Director of Biosecurity and be accompanied by the prescribed fee, if any.

- (2) An application for biosecurity export clearance for a regulated article or regulated consignment must –
- (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 must –
- (a) specify the receiving country;
  - (b) specify the nature and quantity of the article or

*that articles do not leave the Jurisdiction if they present a biosecurity threat to other countries.*

*It supplements the power to prohibit exports under clause *[BBC1(7)]*.*

*The requirement must be in line with any international obligations of the Jurisdiction or of any bilateral agreement with a receiving country.*

*Section *[MP8]* will apply as to publication, etc. and section *[MP6]* as to evidence.*

#### ***BEP5: Application for biosecurity export clearance***

*This sets out how an application for biosecurity export clearance of an article or consignment is to be made.*

*This section does not apply to passengers or crew members, as section *[VA9]* applies to them.*

consignment;

- (c) attach any sanitary or phytosanitary certificate issued under section [BEP3(2)] in relation to the article or consignment;
- (d) attach documentation relating to any other biosecurity measures required under section [BEP4(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 must 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 [VA9] applies to such persons.

#### **Grant of biosecurity export clearance**

**BEP6.** (1) Before granting biosecurity export clearance in respect of an article or consignment, a biosecurity officer must be satisfied that –

- (a) the biosecurity certification requirements of the receiving country have been complied with;
- (b) any biosecurity measures specified under section [BEP4] in respect of an article have been applied; and
- (c) the prescribed fee, if any, has been paid.

(2) If an outgoing article that requires biosecurity export clearance is found to be or contain a species that is regarded as an invasive non-native species in the receiving country, or to be infected, infested or contaminated by a pest that is regulated in the receiving country, biosecurity clearance will be refused in respect of it .

#### ***BEP6: Grant of biosecurity export clearance***

*This requires a biosecurity officer to grant biosecurity export clearance once all requirements have been met.*

(3) An article that is found to be a prohibited export will be refused biosecurity export clearance.

*Under subclause (3), clearance will be refused for prohibited exports.*

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

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

(6) If a biosecurity officer considers it necessary to inspect any outgoing article or consignment for the purposes of this section, section [PBO4] applies.

#### **PART [BQ] – BIOSECURITY QUARANTINE**

#### ***PART [BQ] – BIOSECURITY QUARANTINE***

*This relates to post-entry quarantine and enables animals, plants or other regulated articles to be detained in biosecurity quarantine for observation or treatment. The provisions are similar to those for quarantine for human health purposes, and relate to articles that are infected, etc. They do not apply to invasive species, which will be reconsigned or destroyed.*

*The provisions are in addition to those for pre-entry detention and quarantine of vessels and aircraft (biosecurity holding areas and biosecurity port quarantine) and relate to individual articles, containers or consignments.*

#### **Biosecurity quarantine of regulated articles**

**BQ1.** (1) A biosecurity officer may, by notice in writing to the importer, order into biosecurity quarantine any incoming regulated article if –

#### ***BQ1: Biosecurity quarantine of regulated articles***

- (a) the article is a prohibited import and must 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, infected, infested or contaminated.

*This empowers a biosecurity officer to order any incoming regulated article into biosecurity quarantine if quarantine is a requirement or justified.*

(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 under section [OP4].

(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 must be given written notice stating the reasons for the quarantine and, if it was removed under subsection (2)(b), the location of the article.

(6) The costs payable by an owner for the keeping of any regulated article in quarantine include transport, storage, unpacking, examination, security, treatment, cleaning, sorting



and –

- (a) in the case of live plants - growth and care in quarantine;
- (b) in the case of live animals - care and feeding of the animals.

(7) Upon notification by a biosecurity officer of the release from quarantine detention of a regulated article, the article must be removed from the quarantine area or station within 5 working days, failing which the owner is liable to pay the prescribed fee for each additional day or part of a day during which the regulated article remains at the quarantine station.

(8) The cost of all food provided to an animal until it is removed from quarantine is payable by the owner or agent.

#### **Biosecurity quarantine stations**

**BQ2.** (1) The Governor in Council, on the advice of the Director of Biosecurity, and after consulting technical section heads as appropriate, may by order 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 Ordinance.

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

(3) The [Secretary/Director] must ensure that every biosecurity quarantine station is provided with any buildings and facilities reasonably needed to –

- (a) hold regulated articles in biosecurity quarantine;
- (b) prevent unauthorised persons from entering the station or removing items from the station;

#### ***BQ2: Biosecurity quarantine stations***

*This enables the Governor in Council (or a Minister) to declare areas of land to be quarantine stations. Private rights must be protected.*

*Under subclause (3), the Secretary (or Director) may erect buildings etc. in quarantine stations.*

- (c) enable a biosecurity officer to perform tests, provide treatment and apply other biosecurity measures as required by or under this Ordinance.

### **Conditions of biosecurity quarantine**

**BQ3.** (1) The Director of Biosecurity, after consulting technical section heads as appropriate, 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 must 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.

### **Management of biosecurity quarantine stations**

**BQ4.** (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 a biosecurity officer or of the person in charge of the station.

(2) A 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

### ***BQ3: Conditions of biosecurity quarantine***

*This enables the Director to issue specifications as to the examination, treatment, disposal or destruction of articles while in biosecurity quarantine or in transit to or from a quarantine station. These will supplement any import specifications issued under section [BIP4] and section MP[8] will apply to them.*

### ***BQ4: Management of biosecurity quarantine stations***

*This sets out rules about conduct in relation to a quarantine station. The Director may issue written instructions to the person in charge of a biosecurity quarantine station as to the management of it. These will not create offences.*

building in it, regardless of the ownership of the station.

- (3) A person who –
- (a) enters a biosecurity quarantine station without permission given 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.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

- (4) The Director of Biosecurity, after consulting technical section heads, may issue written instructions to the person in charge of a biosecurity quarantine station as to the management of the station.

#### **Release from biosecurity quarantine**

**BQ5.** (1) A conveyance, container or article must 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 must have been applied; and
  - (b) all quarantine fees must have been paid.

(3) Once subsection (2) has been complied with, the conveyance, container or article must 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.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

#### ***BQ5: Release from biosecurity quarantine***

*Items in biosecurity quarantine must not be released except on the authority of a biosecurity quarantine release certificate issued by a biosecurity officer and only when quarantine clearance is granted.*

### **Return to quarantine**

**BQ5A.** A biosecurity officer may –

- (a) examine any regulated article that has been released from quarantine under section [BQ5]; and
- (b) if of the opinion that there is a danger of spreading pests and/or diseases,

order the regulated article back into quarantine for tests or treatment as specified under section [BIP4], at the expense of the importer.

### ***BQ5A: Return to quarantine***

*This enables a biosecurity officer to order articles to be returned to quarantine after release, if necessary.*

### **Biosecurity quarantine notices**

**BQ6.** (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 of Biosecurity under section [BQ3].

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

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

### ***BQ6: Biosecurity quarantine notices***

*A biosecurity quarantine notice may be placed on a biosecurity quarantine station stating the conditions and duration of quarantine and other information as specified by the Director, and must not be removed.*

### **No imported animal or plant to be at large**

**BQ7.** (1) No person may liberate or cause to be liberated from a biosecurity quarantine station, biosecurity port quarantine area or biosecurity holding area, or let go at large in [Jurisdiction], any animal, plant or organism which is subject to biosecurity control under this Ordinance.

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

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(3) A person who contravenes subsection (1) –

### ***BQ7: No imported plant or animal to be at large***

*Imported plants or animals in biosecurity quarantine must not be allowed at large without authority.*

*In subclause (3)(a) a local decision is needed*

- (a) is liable, in addition to the prescribed maximum penalty, to pay the [Government/Department] the cost of recapturing and confining or if necessary destroying the animal, plant or organism;
- (b) is not entitled to any compensation for loss of or damage to the animal, plant or organism occasioned by its being recaptured and confined or if necessary destroyed in accordance with Part [PBO] or Part [BIC].

## **PART [PBO] – POWERS OF BIOSECURITY OFFICERS**

### **General rules as to exercise of powers**

**PBO1.** (1) The powers conferred by this Ordinance 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 reference in this Ordinance to a biosecurity officer, when exercising power, means a duly authorised biosecurity officer acting in the performance of his or her duties.

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

## ***PART [PBO] – POWERS OF BIOSECURITY OFFICERS***

*This Part sets out the general powers of biosecurity officers, in addition to the specific powers relating to order control in Parts [BIP], [BEP] and [BQ]. They include power to kill animals and conduct a post mortem examination, and powers relating to people generally.*

### ***PBO1: General rules as to exercise of powers***

*The powers are to be used only to ascertain whether there is a biosecurity risk presented by a conveyance, container or item and to eliminate or reduce the risk to an acceptable extent.*

*A biosecurity officer may use only reasonably necessary force and should obtain the assistance of a police officer to effect an arrest or enter premises, and if practical, request the assistance of the person in control of the premises, conveyance, container or article.*

*No warrant is needed but the officer should produce his or her identification.*

(4) 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 must, if practicable, request the assistance of the person in control of the premises, conveyance, container or article.

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

(6) A biosecurity officer exercising powers under this Part must 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.

(7) Before exercising a power in a situation that involves shipping, civil aviation, human health, the environment or any other activity governed by another law of *[Jurisdiction]*, a biosecurity officer must if practicable consult the officer or authority responsible under that law for that activity.

(8) A biosecurity officer who takes any sample, makes any test or treats any article or any conveyance, or orders such action to be taken, must notify the owner or agent of the proposed action, unless giving notice is not practicable.

(9) The powers conferred on biosecurity officers by or under this Ordinance must be exercised subject to –

- (a) any regulations made by the Governor in Council under this Ordinance in respect of those powers;
- (b) any biosecurity specifications made in respect of regulated articles;
- (c) any written directions given under section [DB3(2)(b)];
- (d) the provisions of –
  - (i) the Vienna Convention on Diplomatic Relations relating to the

- premises of a diplomatic mission, diplomatic bags and the personal baggage of diplomatic agents;
- (ii) the Vienna Convention on Consular Relations relating to consular premises, archives and documents.

### **Entry, search and seizure**

- PBO2.** (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 *[Jurisdiction]*;
- (b) search an outgoing vessel or aircraft if the officer has reason to believe there are on board any uncleared articles that require biosecurity 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 Ordinance;
- (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 Magistrate is satisfied on affidavit evidence by a biosecurity officer that –
- (a) there may be uncleared regulated articles in a dwelling house; and
- (b) the consent of the owner or occupier to entry and search of the dwelling house cannot be obtained,

### ***PBO2: Entry, search and seizure***

*This section regulates entry to and search of premises and conveyances.*

*The power relates to incoming and outgoing conveyances and to premises.*

*Entry of a house at nighttime requires a warrant, issued by a Magistrate (or whoever is the appropriate authority for the purpose.)*

the Magistrate 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 *[Jurisdiction]* are kept.

(4) A person who keeps regulated articles in or on any premises, or in a conveyance, prior to importation or exportation of the article, must 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 *[Jurisdiction]* in respect of articles intended for importation into *[Jurisdiction]*.

(6) A person who contravenes subsection (4) commits an offence.  
Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(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 Ordinance.

(8) A biosecurity officer who seizes anything from a person under subsection (7) must –

- (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 Ordinance.



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

### **Inspection of documents**

- PBO3.** (1) A biosecurity officer may –
- (a) call for and inspect documents on or in incoming or outgoing vessels and aircraft as provided in sections [VA2] and [VA7] respectively;
  - (b) open and inspect at a biosecurity point of entry any incoming document, including mail and items carried by a courier, 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 and items carried by a courier, 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 in subsection (1)(b) and (c) must only be exercised in respect of personal letters if the officer reasonably suspects that a letter contains or relates to a biosecurity threat.

### **Inspection of articles**

**PBO4.** (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.

### ***PBO3: Inspection of documents***

*This section regulates the inspection of documents.*

*There are several requirements for the production of documents at points of entry, etc.*

### ***PBO4: Inspection of articles***

*This section regulates the inspection of articles.*

*An inspection at this stage would be only visual, or handling; it would not include chemical tests etc. which are covered in section [PBO7].*

- (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 [BIP1] and [BEP1] and any other powers of inspection in or under this Ordinance.
- (4) For the purpose of exercising the powers of inspection under this Ordinance, 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 under section [OP4];
  - (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 Government 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 Ordinance, 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 Ordinance or to investigate a possible offence under it.
- (7) Inspection of articles in transit is governed by section [BIP10(7)].

### **Detention of articles**

**PBO5.** (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 Ordinance.

(3) An article detained under this section must 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 article 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 article to be removed to the specified place.

(5) If an article is detained under this section, a biosecurity officer must 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 charges for detention of an article under this section are as prescribed.

***PBO5: Detention of articles***

*Under this section, biosecurity officers will have power to detain articles for testing and treatment in a biosecurity holding area, biosecurity quarantine area or approved premises (see section [Adm8].*

*'Detain' could mean e.g. locking the steering wheel of a ship, or preventing a person from leaving a port or airport etc.*

### **Taking of samples**

**PBO6.** (1) A biosecurity officer may, with the consent of the importer, owner or custodian, take samples from any –

- (a) part of an incoming vessel or aircraft that has on board regulated articles;
- (b) warehouse containing regulated articles intended for importation;
- (c) consignment of incoming regulated articles, wherever located;
- (d) 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 under section [OP4].

(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 exporter.

(7) When exercising powers under subsection (1) or (2), a biosecurity officer must give the importer or exporter a written notice, identifying the quantity of the sample and the place where the sample is to be analysed.

### ***PBO6: Taking of samples***

*This section gives a biosecurity office power to take samples for analysis.*

*Detailed rules about taking of samples are often found in other legislation, such as pesticides or pharmaceuticals but are not needed in this Ordinance. They can be prescribed by regulations if required e.g. as to what happens to the remainder of the consignment meanwhile.*

(8) In other respects, the procedure for taking and analysing samples, recording the results and disposing of the samples is as specified by the Director of Biosecurity.

(9) 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.

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

(11) The charges for the taking and analysis of samples under this section are as prescribed.

### **Testing of articles**

**PBO7.** (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 must be either released to the importer, and biosecurity import clearance granted in respect of it, or it must be treated in accordance with section [PBO8] 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 must either be granted or refused in respect of the article.

### ***PBO7: Testing of articles***

*This section governs the testing of samples. See the definition of ‘test’ in [Pre2].*

*There is a duty of care on the testing authority, but otherwise no compensation is payable for a test that damages or destroys and article.*

*See also section [MP5] as to liability of officials.*

*Under section [Adm1], testing could be outsourced to other agencies.*

(5) Section [PBO5(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) must 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 charges for testing of an article under this section are as prescribed.

#### **Treatment of articles**

**PBO8.** (1) If an incoming regulated article requires treatment in order to meet the biosecurity import requirements in respect of it, the article must be treated before biosecurity import clearance is granted in respect of it.

(2) If an incoming article is found to be or to contain a prohibited or restricted invasive species, or to be infected, infested or contaminated by a prohibited or restricted pest, 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 licence.

(3) Section [PBO5(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 any applicable charges, the article must, subject to subsection (7), be released to the importer and biosecurity import clearance granted in respect of it.

#### ***PBO8: Treatment of articles***

*This section applies if an article needs to be treated to remove the biosecurity risk.*

*Treatment is defined in section [Pre2] and can include cutting off branches, vaccinating animals and a whole range of action to reduce a biosecurity threat. It might be administered in quarantine, or at approved premises, or at a port or airport.*

(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 [*Jurisdiction*];
- (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 must be reconsigned or, if the importer chooses, or section [PBO9(3)] applies, destroyed.

*Under subclause (7) the importer is given the option of having the item destroyed or reconsigned, rather than treated, but subject to the biosecurity risk.*

(8) Notice of action to be taken under subsection (6) or (7) must 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 must 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.

### **Reconsignment of articles**

**PBO9.** (1) If an incoming regulated article which requires an import licence or a sanitary or phytosanitary certificate does not have the licence or certificate attached to it, a biosecurity officer may, after informing the importer, detain the article for reconsignment or destruction .

### ***PBO9: Reconsignment of articles***

*This section applies if an article needs to be reconsigned out of the Jurisdiction to remove the biosecurity risk.*

*Reconsignment does not apply to outgoing articles.*

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

- (3) Reconsignment is at the option and cost of the importer, but –
  - (a) reconsignment must be effected within a time specified by the officer, which must 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 must be destroyed.

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

### **Destruction of articles**

**PBO10.**(1) If this Ordinance requires or authorises an article to be destroyed, the

### ***PBO10: Destruction of articles***



destruction of the article must be in accordance with this section.

(2) If an incoming article is found to be or contain a prohibited or restricted invasive species, or to be infected, infested or contaminated by a prohibited or restricted pest, and –

- (a) appropriate treatment is not available in *[Jurisdiction]*;
- (b) in the opinion of the Director of Biosecurity there would still be a biosecurity risk after treatment; or
- (c) the importer chooses not to have the article treated,

the article must be reconsigned or, if the importer chooses, or if section

*[PBO9(3)(b)]*

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 Ordinance.

(4) Destruction of an article under this Ordinance 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 of *[\\$500]*, the Director of Biosecurity must obtain the written approval of the Director before arranging for its destruction.

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

*This section applies of an article needs to be destroyed to remove the biosecurity risk.*

*To avoid peremptory destruction of articles, the section provides for reconsignment as an option available to the importer, but the option is not available if the biosecurity risk is too great.*

*Subclause (6) sets a financial limit to the type of article that a biosecurity officer can order destroyed without reference to higher authority; the amount is for local decision.*

(8) The Director of Biosecurity must give notice of an intention to destroy any article 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 charges for destruction of an article under this section are as prescribed.

[(11) In relation to an animal or animal product, the Director of Biosecurity must consult the Senior Veterinary Officer before performing a function under this section.]

*Subclause (11) is not needed if the Director is suitably qualified. The title will be the local one.*

### **Post mortem examination of an animal**

**PBO11.(1)** If an appropriately qualified biosecurity officer examining an animal pursuant to this Ordinance 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 Director of Biosecurity [(given after consulting the Senior Veterinary Officer)] 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 must be provided in writing to the [Senior Veterinary Officer, to the] Director of Biosecurity and to the owner of the animal, if the owner can be identified and located.

***PBO11: Post mortem examination of an animal***  
*This section permits the killing of an animal in order to conduct a post mortem examination. It confers the power to take the life of an animal, without compensation.*

*If it is thought desirable to provide for compensation, this can be included; but a diseased animal will presumably not be worth much.*

*The reference to the SVO in subclauses (1) and (2) is not needed if the Director is suitably qualified. The title will be the local one.*

### **Quarantine seal and identification marks**

**PBO11A.** (1) At any time after the arrival of a conveyance or goods in [Jurisdiction] a biosecurity officer may place a quarantine seal on any container or package of imported goods or on any cabin or locker in any conveyance from outside [Jurisdiction], either for subsequent quarantine inspection, or for the holding of goods under quarantine while the conveyance remains in the waters of [Jurisdiction].

(2) A biosecurity officer may place a quarantine seal or lock on any container or package of imported goods which has been discharged from any conveyance arriving from outside [Jurisdiction], either for subsequent quarantine inspection, treatment or detention prior to release or reconsignment of goods as the case may be.

(3) A biosecurity officer may, for the purposes of the Ordinance, apply or cause to be applied an identification mark to any regulated article, container, premises, equipment, or conveyance.

(4) A person who interferes with or removes a quarantine seal or lock or removes and identification mark without the permission of a biosecurity officer commits an offence.

Penalty: A fine of [£xxxx], or imprisonment for [yyy months], or both.

### **Powers in relation to people**

**PBO12.**(1) If a biosecurity officer is of the opinion that any person –

- (a) seeking to enter or leave [Jurisdiction];
- (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 [Jurisdiction], the officer may detain and question the person.

(2) If a biosecurity officer suspects that there may be upon a person seeking to enter [Jurisdiction] an article the importation of which would constitute an offence

***PBO11A: Quarantine seal and identification marks***  
*This enables a biosecurity officer to seal incoming containers and mark regulated articles for identification purposes.*

***PBO12: Powers in relation to people***  
*This governs the detention, questioning and searching of people and their baggage. It applies not only to incoming and outgoing passengers but to workers at e.g. quarantine stations.*

under this Ordinance, 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 *[Jurisdiction]* an article the exportation of which would constitute an offence under this Ordinance, the officer may cause the person and the person's baggage to be searched.

(4) A search of a person under this section must be carried out by an officer 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 any article found.

(6) A person who refuses to –  
 (a) answer to the best of his or her knowledge and ability questions reasonably put by a biosecurity officer; or  
 (b) submit to a search reasonably required under this section,  
 commits an offence under section [OP4].

*Subclause (6) is in addition to the duty of passengers to make a declaration under section [VA9].*

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

#### **PART [BIC] – BIOSECURITY INTERNAL CONTROL**

#### ***PART [BIC] – BIOSECURITY INTERNAL CONTROL***

*This Part sets out the powers of the Director and biosecurity officers to control incursions of invasive species and infestations by pests within the Jurisdiction. The powers are in addition to the general ones given by Part [PBO].*

*The Part also provides for areas to be declared biosecurity controlled areas, with restrictions imposed over the movement into and out of such areas.*

### **Biosecurity status surveys**

**BIC1.** (1) The Governor in Council, on the advice of the Director of Biosecurity, and after consulting technical section heads as appropriate, may order a survey of any area of *[Jurisdiction]* to be conducted to ascertain the status of prohibited or restricted invasive species and pests in the area and the biosecurity risk of moving animals, plants, humans or organisms into, out of, or through the area.

- (2) An order under this section –
- (a) must be published as required by section [MP7(1)];
  - (b) does not take effect until published in the *Gazette*.
- (3) For the purposes of a survey under this section, a biosecurity officer may, in the area of the survey –
- (a) inspect premises and equipment;
  - (b) take photographs and films and make drawings;
  - (c) inspect animals and plants and their products;
  - (d) question persons;
  - (e) collect specimens and perform tests relating to animals, plants, animal and plant products, land, water and the environment.

(4) For the purposes of a survey under this section, the Director of Biosecurity 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

### ***BIC1: Biosecurity status surveys***

*This enables the Governor in Council (or a Minister) to order a survey of any area of the Jurisdiction to be conducted to ascertain the status of invasive species and pests in the area and the biosecurity risk of moving animals, plants, humans or organisms into, out of, or through the area.*

*Powers are given to biosecurity officers and the Director to require people to facilitate the taking of a survey, including making animals and plants available. The results can be sent to other governments.*

*Conducting a survey is always open to the Government, but it is useful to remind the Governor of the need, and to create an obligation to cooperate with the survey. Inputs from local organisations might be appropriate in this context.*

designated by the Director of Biosecurity, after consulting technical section heads as appropriate.

- (5) A person who, in the course of a survey under this section refuses or fails to –
- (a) permit a biosecurity officer to enter property, collect specimens or perform tests as reasonably required;
  - (b) answer to the best of the person’s knowledge and ability oral or written questions reasonably put to the person by a biosecurity officer;
  - or
  - (c) make animals or plants in the ownership, custody or control of the person available as required under subsection (4),
- commits an offence under section [OP4].

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

### **Entry, search and seizure**

**BIC2.** (1) If a biosecurity officer reasonably suspects the presence of a prohibited or restricted invasive species or pest that is not under official control, the officer may at any time –

- (a) stop, board and search any conveyance;
- (b) 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) with the consent of the owner, enter and search a dwelling house for animals, plants and their products;
- (d) 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 [Jurisdiction].

### ***BIC2: Entry, search and seizure***

*This gives a biosecurity officer the power to stop, board and search conveyances and enter and search premises, buildings or areas, whether or not a survey has been ordered, if the officer suspects the presence of a prohibited or restricted invasive species or pest, that is not under official control. (The term ‘under official control’ is defined in section [Pre2].) A warrant is needed to search a dwelling house. The officer can seize anything which poses a biosecurity threat or can be used as evidence of the commission of an offence under the Ordinance.*

(2) If a Magistrate 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 *[Jurisdiction]*; and
- (b) the consent of the owner or occupier to entry and search of the dwelling house cannot be obtained,

the Magistrate 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 *[Jurisdiction]*; or
- (b) may be used as evidence of the commission of an offence under this Ordinance.

(4) A biosecurity officer who seizes anything from a person under subsection (3) must –

- (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 Ordinance.

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

### **Detention and testing of animals and plants and their products**

**BIC3.** (1) If an animal or plant or animal or plant product in *[Jurisdiction]* is suspected of being a prohibited or restricted invasive species, or of being infected or infested by a prohibited or restricted pest, a biosecurity officer may direct the animal,

***BIC3: Detention and testing of animals and plants and their products***

*This empowers a biosecurity officer to direct that an animal or plant or product suspected of being a*

plant or product to be detained and confined in a specified place for tests to be conducted.

(2) The place mentioned in subsection (1) is a place designated by the Chief Biosecurity officer, after consulting technical section heads as appropriate.

(3) 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 [PBO6] (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 [PBO11].

(4) If after testing as in subsection (3) the animal, plant or product is considered to pose a biosecurity threat to *[Jurisdiction]*, 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.

(5) 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.

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

*prohibited or restricted invasive species, or of being infected or infested by a prohibited or restricted pest, to be detained and confined in a place specified by the Director for tests to be conducted.*

*The cost of removal and is borne by the Department (or Ministry), and the owner is entitled to compensation for damage to or destruction of an article.*



(7) The cost of removal of an article to and its detention in a specified place under this section is to be borne by the [Department], and the owner is entitled to compensation for damage to or destruction of an article (but not consequential loss) caused as a result of any such removal or detention.

*Subclause (7) requires a local decision*

(8) Section [BBC5] applies to places specified under this section as it applies to biosecurity holding areas, except that section [BQ2(2) and (3)] do not apply.

### **Treatment or destruction of animals and plants and their products**

**BIC4.** (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 [BIC3], 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 [Jurisdiction];
- (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) must be given to the owner or custodian in writing before the action is taken.

### ***BIC4: Treatment or destruction of animals and plants and their products***

*This enables a biosecurity officer to administer treatment to an animal, plant or product, to eliminate or reduce a biosecurity threat posed by it.*

*If the consent of the owner is not given, or no adequate treatment is available, the animal, plant or product may be destroyed. The owner is entitled to compensation for damage to or destruction of an article.*

(4) Subject to subsection (5), section [PBO10] 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/Department], and the owner is entitled to compensation (but not consequential loss) for destruction of an article under this section.

*Subclause (5) requires a local decision*

### **Infested biosecurity controlled areas**

- BIC5.** (1) If –
- (a) an animal or plant on land or premises in any area of [Jurisdiction] is found to be a prohibited or restricted invasive species, or to be infected or infested by a pest; and
  - (b) the powers in sections [BIC2] to [BIC4] are inadequate to control the outbreak,

the Governor in Council, on the advice of the Director of Biosecurity, may by order declare the land or premises to be an infested biosecurity controlled area in respect of that species or pest.

- (2) An order under this section –
- (a) may include an area of adjacent land if necessary to effectively contain the infestation;
  - (b) must be made as soon as practicable after the finding of the infestation;
  - (c) must be published as required by section [MP7(1)];
  - (d) comes into effect on making, if so declared.

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

### ***BIC5: Infested biosecurity controlled areas***

*This enables the Governor in Council (or a Minister) to declare an infested controlled area. Such an area would also need special controls, to contain the infestation. In an emergency, the powers in Part [BE] can be used.*

(4) In an infested biosecurity controlled area, pending the making of an order under section [BIC6], 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.

*Under subclause (4), as a temporary measure, the movement of animals and plants is prohibited except with the authority of a biosecurity officer.*

(5) Before advising the Governor in Council under this section, the Director of Biosecurity must –

- (a) obtain appropriate scientific advice;
- (b) consult technical section heads as appropriate; and
- (c) provide individuals and bodies that have relevant expertise an opportunity to comment on a proposed order.

(6) In advising the Governor in Council under this section, the Director of Biosecurity may apply the precautionary principle, but subject to section [Pre6].

(7) A person who contravenes subsection (4) commits an offence.  
Penalty: A fine of £50,000 or imprisonment for 12 months, or both.

*Subclause (7) shows high penalties as indicating the seriousness of the offence. Penalties generally are a matter for local decision, however.*

### **Regulation of infested biosecurity controlled areas**

**BIC6.** (1) In an infested biosecurity controlled area, the Director of Biosecurity, after consulting technical section heads as appropriate, may by order writing direct –

- (a) the disposal of an invasive species;
- (b) the treatment or disposal of diseased animals and plants;
- (c) the destocking, cleaning, disinfecting or other treatment of land, premises and conveyances;
- (d) the inspection and treatment of regulated articles in or entering or leaving the area;
- (e) any other biosecurity measures the Director of Biosecurity considers necessary to control the infestation.

### ***BIC6: Regulation of infested biosecurity controlled areas***

*This enables the Director to make orders to protect an infested pest-free area. The powers are similar to those in the UK used to respond to ‘foot-and-mouth disease’. The power is given to the Director because of the probable urgency, but could be given to the Governor in Council (or a Minister.)*

*An order can regulate the treatment or disposal of diseased animals and plants; the destocking, cleaning, disinfecting or other treatment of land, premises and*

- (2) In respect of an infested biosecurity controlled area, the Director of Biosecurity, after consulting technical section heads as appropriate, may by order control –
- (a) the movement of animals or plants or their products or other regulated articles into, out of or within the area;
  - (b) the movement of humans and conveyances into, out of or within the area;
  - (c) any other activity that the Director of Biosecurity considers needs to be controlled to prevent the spread of an infestation into and out of the area.
- (3) An order under subsection (1) or (2) may create offences for breaches of it and prescribe maximum penalties not exceeding a fine of £20,000 for an individual and £100,000 for a corporate body.
- (4) An order under this section –
- (a) must be published as required by section [MP7(1)];
  - (b) does not take effect until published in the *Gazette*.
- (5) Section [BIC5(4)] ceases to have effect upon the coming into force of an order under this section.
- (6) The cost of treatment or destruction under this section is to be borne by the [Department], and the owner is entitled to compensation (but not consequential loss) for destruction of an article under this section.

### **Threat-free biosecurity controlled areas**

**BIC7.** (1) The Governor in Council, on the advice of the Director of Biosecurity, may by order declare any area of [*Jurisdiction*] to be a threat-free biosecurity controlled area in respect of a specified invasive species or pest.

*conveyances; the inspection and treatment of regulated articles in or entering or leaving the area; the movement of animals or plants or their products or other regulated articles into, out of or within the area; and the movement of humans and conveyances into, out of or within the area. Heavy penalties are shown for breach of an order, but are for local decision.*

***BIC7: Threat-free biosecurity controlled areas***  
*This enables the Governor in Council (or a Minister) to declare any area of the Jurisdiction to be a threat-free biosecurity controlled area in respect of a specified invasive species or pest.*

- (2) A threat-free biosecurity controlled area is one where the specified invasive species or pest does not occur, so far as is known, and where incursions of that species or pest should be prevented.
- (3) An order under this section –
- (a) must be published as required by section [MP7(1)];
  - (b) does not take effect until published in the *Gazette*.
- (4) Following a further survey conducted under section [BIC1], and on the advice of the Director of Biosecurity, the Governor in Council may amend or revoke an order made under subsection (1).
- (5) Before advising the Governor in Council under this section, the Director of Biosecurity must –
- (a) obtain appropriate scientific advice;
  - (b) consult technical section heads as appropriate; and
  - (c) provide individuals and bodies that have relevant expertise an opportunity to comment on a proposed order.

#### **Regulation of threat-free biosecurity controlled areas**

- BIC8.** (1) In respect of a threat-free biosecurity controlled area the Director of Biosecurity, after consulting technical section heads as appropriate, may by order –
- (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 invasive species or pest in the area.
- (2) An order under subsection (1) –
- (a) must only be made for the purposes of preventing incursions of the specified invasive species or pest into the biosecurity controlled area;

#### ***BIC8: Regulation of threat-free biosecurity controlled areas***

*This enables the Director to make necessary orders to protect a pest-free area. The comments under clause [BIC6] above apply here also.*

*Other measure might also be required, but do not need legislating for if within the normal administrative powers of the Government.*

*The penalty is for local decision*

- (b) may create offences for breaches of the order and prescribe maximum penalties not exceeding a fine of £20,000 for an individual and £100,000 for a corporate body.
- (3) An order under this section –
- (a) must be published as required by section [MP7(1)];
  - (b) does not take effect until published in the *Gazette*.
- (4) The Director of Biosecurity may by lawful administrative means, and after consulting as aforesaid, institute other measures to keep the biosecurity controlled area free of the specified invasive species or pest.

**Control of movement between areas of [Jurisdiction]**

**BIC8A.** (1) The Governor in Council may by order prohibit the movement of specified animals or plants or their products into specified areas of [Jurisdiction] from outside those areas, or from one of those areas into another, except with a licence from the Director of Biosecurity.

- (2) An order under subsection (1) may only be made –
- (a) to reduce a known biosecurity threat to the specified area or areas posed by the specified animal or plant or product;
  - (b) if the powers in sections [BIC2] to [BIC8] are inadequate or inappropriate to reduce the biosecurity threat;
  - (c) on the advice of the Director of Biosecurity, given after consulting technical section heads as appropriate.
- (3) An order under subsection (1) -
- (a) must be published as required by section [MP7(1)];
  - (b) comes into effect on making, if so declared;
  - (c) may be varied, on the advice of the Chief Biosecurity officer, given as provided in subsection (2)(c).

***BIC8A: Control of movement between areas of [Jurisdiction]***

*This enables the Governor in Council (or a Minister) to control the movement of animals and plants and their products within the Jurisdiction. This might be particularly useful in the case of an island archipelago but could also be useful where there are distinct areas of the country that can be cordoned off. It supplements the power to declare biosecurity controlled areas under clause [BIC5]. The licence scheme could be a more simple permit system, and could impose conditions on vessels and aircraft and land vehicles..*

(4) A person who contravenes the conditions of a licence granted under subsection (1) commits an offence.

Penalty: A fine of £50,000 or imprisonment for 12 months, or both.

### **Destruction of feral animals**

**BIC9.** (1) If the Director of Biosecurity has reason to suspect that a wild or feral animal is a prohibited or restricted invasive species or is carrying a pest, the Director of Biosecurity may, in order to prevent the species or pest from being established or spreading in *[Jurisdiction]*, after consulting technical section heads as appropriate, cause the animal to be destroyed.

(2) The power under subsection (1) extends to the destruction of a wild or feral animal which poses a threat to the health or safety of other animals or to humans, whether or not it is a prohibited or restricted invasive species or carries a pest.

(3) The carcass of an animal destroyed under subsection (1) or (2) must be disposed of in a manner that will not create the risk of the spread of any prohibited or restricted invasive species or of a pest.

### **Notifiable invasive species and pests**

**BIC10.**(1) The Governor in Council, on the advice of the Director of Biosecurity, may by order declare the invasive species and the pests that pose a biosecurity risk in *[Jurisdiction]* and are therefore notifiable for purposes of this Ordinance.

(2) Before advising the Governor in Council under subsection (1), the Director of Biosecurity must –

- (a) consult technical section heads as appropriate; and
- (b) provide individuals and bodies that have relevant expertise an opportunity to comment on the proposed order.

*Subclause (4) sets the penalties high as indicating the seriousness of the offence. Penalties generally are a matter for local decision, however.*

### ***BIC9: Destruction of feral animals***

*This section enables wild animals to be destroyed if they pose a biosecurity threat.*

*As feral animals are not owned, it is arguable that no legislative authority is needed to destroy them, but this section makes the position clear. It would apply to birds in view of the definition of ‘animal’ in [Pre2].*

### ***BIC10: Notifiable invasive species and pests***

*This enables the Governor in Council (or a Minister) to make an order declaring which invasive species and pests are notifiable as posing a biosecurity risk (as defined in clause [Pre2].)*

*They will not necessarily be the same as those listed by an order under section [BBC1] (prohibited and restricted invasive species and pests.)*

*All persons in the Jurisdiction, and the masters of vessels and captains of aircraft, must report an occurrence of such species and pests.*

*Subclause (3) requires the manner of reporting (to an*

(3) The Governor in Council must, when making an order under subsection (1), set out the manner of giving notice of any such species and pests to the Director of Biosecurity.

*office, police station etc.) to be included in the order.*

(4) An order under this section –

- (a) must be published as required by section [MP7(1)];
- (b) does not take effect until published in the *Gazette*.

(5) A person who knows of or suspects the occurrence of a notifiable species or pest in [*Jurisdiction*], or on board a vessel or aircraft in [*Jurisdiction*], must as soon as reasonably practicable notify the Director of Biosecurity in the manner set out in the order made under subsection (1), unless the person reasonably believes that the Director has already been notified of the occurrence.

(6) A person who fails to comply with subsection (5) commits an offence.  
Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(7) The master of a vessel or captain of an aircraft in [*Jurisdiction*] who knows of or suspects the occurrence of a notifiable invasive species or pest on board the vessel or aircraft must –

- (a) as soon as reasonably practicable notify the Director of Biosecurity in the manner required by an order made under subsection (1); and
- (b) take any action in relation to the vessel or aircraft that is directed by a biosecurity officer.

*Subclause (7) requires the Director to keep a record of occurrences of notifiable species and pests.*

(8) A master or captain who fails to comply with subsection (7)(a) or (b) commits an offence.  
Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(7) The Director of Biosecurity must record in the biosecurity register all occurrences of notifiable invasive species and pests that are notified under this section or that otherwise come to the notice of the Director of Biosecurity.



### **Beneficial organisms and biocontrol agents**

**BIC11.(1)** The Governor, on the advice of the Chief Biosecurity officer, may in writing authorise the release of a beneficial organism or biocontrol agent if it is necessary or appropriate for the control or eradication of a particular invasive species or pest in *[Jurisdiction]*.

(2) Before advising the Governor under subsection (1) the Director of Biosecurity must –

- (a) make a biosecurity risk assessment as to the probable effects of the release;
- (b) obtain appropriate scientific advice;
- (c) consult technical section heads as appropriate;
- (d) provide individuals and bodies that have relevant expertise an opportunity to comment on the proposed release.

(3) An authorisation under subsection (1) must identify –

- (a) the organism or agent;
- (b) the invasive species or pest 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.

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

(5) The Director of Biosecurity must record in the biosecurity register -

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

***BIC11: Beneficial organisms and biocontrol agents***  
*This enables the Governor (or a Minister) in writing to authorise the release of biological control agents in order to control or eradicate pests. This is a comparatively novel legislative provision but is in line with modern thinking on pest control.*

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

(6) In this section, “beneficial organism” and “biocontrol agent” mean a natural enemy, antagonist or competitor of an invasive species or of a pest, and any other self-replicating biotic entity used for the control of invasive species and pests.

## **PART [BE] – BIOSECURITY EMERGENCIES**

## ***PART [BE] – BIOSECURITY EMERGENCIES***

*This Part provides powers to deal with biosecurity emergencies in the Jurisdiction which cannot be dealt with under Part [BIC]. If those powers are insufficient to control an incursion of an invasive species, or the outbreak of a pest, it may be necessary to declare a biosecurity emergency in part or all of the country. If a biosecurity emergency is declared, the Director is given extensive powers to deal with it, if necessary with the assistance of the police and other Government personnel (clauses [BE2] and [BE3].)*

*As the powers are quite draconian, it is desirable for ExCo (or the Cabinet) to have a say in the making of an order, and for the legislature to decide on its continuation for more than a limited period. The precise mechanism will depend on local circumstances and preferences, however.*

*As most jurisdictions have existing national disaster management legislation, it is desirable to have liaison between those dealing with a biosecurity emergency and other types of emergency*

### **Declaration of a biosecurity emergency area**

**BE1.** (1) On receiving evidence that a biosecurity emergency has arisen in the whole or any part of [Jurisdiction], the Governor in Council may by order declare a biosecurity emergency in respect of the whole of or that part of [Jurisdiction].

***BE1: Declaration of a biosecurity emergency area***  
*This enables the Governor in Council (or a Minister) by order to declare a biosecurity emergency area.*

(2) Before making a declaration under subsection (1), the Governor in Council must obtain the advice of the Director of Biosecurity and consult technical section heads as appropriate.

(3) A biosecurity emergency area may include an area where there is an incursion of a prohibited or restricted invasive species, or where an animal or plant is found to be infested or infected with a prohibited or restricted pest, and adjacent areas to the extent reasonably necessary.

(4) Notice of a declaration under this section must be –  
 (a) published as required by section [MP7(1)];  
 (b) displayed on noticeboards or similar throughout the biosecurity emergency area.

(5) A declaration under subsection (1) must be revoked as soon as the biosecurity threat is removed or reduced to an acceptable degree.

(6) A declaration under subsection (1) expires on the date which is [6 months] after it comes into force unless it is revoked or extended on or before that date by a resolution of the Legislative Council, and subsection (2) applies to such a resolution.

(7) An extension of a biosecurity emergency declaration by resolution of the Legislative Council may not be for more than [6 months] from the date of the resolution, but may be renewed in the same manner before the end of that period.

### **Response to a biosecurity emergency**

**BE2.** (1) When a biosecurity emergency area is declared under section [BE1], the Director of Biosecurity, after consulting technical section heads as appropriate, must undertake a detailed survey, using the powers in section [BIC1], to ascertain the precise extent and severity of the incursion or other biosecurity threat and the most appropriate measures to take in response.

*Local decisions are needed as to the mechanism and the duration of such an order. Also as to whether to involve local NGOs etc.*

*Subclauses (6) and (7) require a local decision as to the period and the local term for the legislature.*

### ***BE2: Response to a biosecurity emergency***

*This section says what the Director should do if a biosecurity emergency is declared. The first step is to do a survey to ascertain the precise extent and*

(2) In deciding on an appropriate response to a biosecurity emergency, the Director of Biosecurity should consult technical section heads as appropriate and be guided by any biosecurity emergency response plan devised under section [DB3(2)(a)].

(3) If the cost of a response to an emergency exceeds or is likely to exceed the current budget of the Government, the Governor should request [the Legislative Council] for additional funds [, as provided by section [Adm1(4)].

### **Action in a biosecurity emergency area**

**BE3.** (1) In respect of a biosecurity emergency area –

(a) the [Secretary/Director of Biosecurity] may request the Chief of Police and any other department of government to use their powers and resources to assist in the control or eradication of any prohibited or restricted invasive species or pest in the area;

(b) the [Governor/Secretary] may in writing requisition for the use of the [Department] any conveyance or equipment which the Director reasonably considers is necessary or useful for preventing, eradicating or limiting the spread of a prohibited or restricted invasive species or pest;

(c) a biosecurity officer may enter upon any land at any time in order to ascertain the status of an invasive species, or of a pest;

(d) the Director may [appoint/designate] as biosecurity officers any temporary additional personnel needed to effectively respond to the biosecurity emergency.

(2) In a biosecurity emergency area, the Director of Biosecurity, after consulting technical section heads as appropriate, 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;

*severity of the biosecurity threat and the most appropriate measures to take in response.*

*Subclause (2) contemplates that there will be a Biosecurity Emergency Response Plan. If that is not the case, the reference can be deleted.*

*If there is a National Disaster Committee or similar, it can be given a liaison role in this section.*

*In subclause (3), the reference to section [Adm1(4)] should be deleted if that provision is not included (see Part [Adm] below.)*

### ***BE3: Action in a biosecurity emergency area***

*This section enables the Director (or Governor or Secretary as decided locally) to call for assistance from the police and other Government agencies in controlling a biosecurity emergency, to requisition conveyances and equipment and to enter land and premises. The Director may mark boundaries, set up roadblocks, and facilities for cleansing and disinfection and disinfect people and animals leaving the area. The cost of treatment or destruction of any article is to be borne by the Government (or Ministry) and compensation is payable.*

*See clause [DB1] as to designations.*

- (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;
- (d) disinfect all conveyances, crates, packing, animals, plants and other things which are likely to carry prohibited or restricted invasive species or pests 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 contaminated, infested or 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;
- (g) perform surveillance activities to ascertain the extent and status of the emergency.

(3) A person who –

- (a) resists, knowingly obstructs, or knowingly and without reasonable excuse fails to comply with a direction of 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 a biosecurity officer; or
- (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 a biosecurity officer,

commits an offence.

Penalty: A fine of [£40,000] or imprisonment for [yyy] months.

*In subclause (3), the penalty should be double the penalty under section [OP4] e.g. £40,000 for an individual or £200,000 for a corporate body*

(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 of Biosecurity (or the Senior Veterinary Officer, in the case of animals or animal products) 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 the [Department];
  - (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.

### **Biosecurity Emergency Regulations**

**BE4.** (1) The Governor in Council, after consulting the Director of Biosecurity and technical section heads as appropriate, may at any time make regulations (“Biosecurity Emergency Regulations”) which –

- (a) supplement the powers given to the Director and biosecurity officers by section [BE3]; and
- (b) take effect upon the declaration of a biosecurity emergency area under section [BE2].

(2) 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;

### ***BE4: Biosecurity Emergency Regulations***

*This section enables the Governor in Council (or a Minister) to make regulations to give additional powers to the Secretary, Director and other persons. These regulations would be triggered automatically by a declaration of a biosecurity emergency and would only remain in force for as long as the emergency lasts.*

*The relationship between this power and the existing prerogative emergency powers in the Jurisdiction will need to be considered.*

- (e) generally, specify the conditions which apply to the area to control the biosecurity emergency.
- (3) Biosecurity Emergency Regulations may –
- (a) confer on the Director and on biosecurity officers powers additional to those conferred by this Ordinance 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 from spreading, including but not limited to cleansing of homes and utensils, removal of stagnant water and disposal of waste;
  - (e) prohibit or restrict the use of any seaport or airport, or of any facilities at any seaport or airport, to the extent specified.
- (4) Biosecurity Emergency Regulations may create offences for breaches of them and prescribe maximum penalties not exceeding a fine of [£40,000] for an individual or [£200,000] for a corporate body.
- (5) Biosecurity Emergency Regulations come into force on the day on which a biosecurity emergency declaration takes effect under section [BE1(6)] and lapse upon the expiry of the declaration under that section. They come into force again if a further declaration is made under section [BE1].
- (6) In respect of action taken under Biosecurity Emergency Regulations –
- (a) the cost of treatment or destruction of any article is to be borne by the [Department];

*In subclause (4) the penalty limits are for local decision, but see under clause [BE3(3)] above.*

- (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.

### **Temporary emergency powers**

**BE5.** (1) If, in the opinion of the Director of Biosecurity there is on any conveyance, container or premises in any part of *[Jurisdiction]* a biosecurity threat which requires an immediate response, the Chief Biosecurity Officer (or Senior Veterinary Officer, as the case may be) may for up to 72 hours exercise any of the powers in section *[BIC5(3) and (4)]* and section *[BIC6(1) and (2)]* as if that part had been declared an infested biosecurity controlled area under section *[BIC5(1)]* in respect of that threat, and offences committed under any of those subsections are punishable accordingly.

(2) If the biosecurity threat remains after the period of 72 hours mentioned in subsection (1) has expired, the provisions of Part *[BIC]* or of this Part apply, as appropriate.

### **PART [DB] – DIRECTOR OF BIOSECURITY, ETC.**

#### ***BE5: Temporary emergency powers***

*This clause supplements Part [BIC] and this Part by providing for emergency situations where there is no time to convene a Cabinet meeting or gazette a declaration. The powers expire after 72 hours.*

#### ***PART [DB] – DIRECTOR OF BIOSECURITY, ETC.***

*This Part assumes there will be a Director of Biosecurity (or similar) appointed to administer the Ordinance. It can be an existing public officer.*

*An alternative is for the powers and duties of the Director to be given to an existing Government department.*

*Another alternative is for a new statutory body to be created.*

*Whatever method is chosen, this Part sets out the general powers and duties of the office, in addition to specific powers and duties mentioned throughout the Ordinance.*



### **Appointment of Director of Biosecurity**

**DB1.** (1) The Governor must in writing appoint a Director of Biosecurity for the purposes of this Ordinance.

(2) The Governor may in writing appoint a Deputy Director of Biosecurity to perform the functions of the Director of Biosecurity whenever the Director of Biosecurity is unable to do so.

(3) If the Director of Biosecurity is temporarily absent from *[Jurisdiction]*, or is temporarily unable to perform his or her duties for any other reason, and if no Deputy Director of Biosecurity has been appointed under subsection (2), the Governor may designate a suitably qualified public officer to act as Director of Biosecurity during that period.

(4) Appointments under this section must be published in the *Gazette* and do not take effect until they are so published.

### **Appointment of biosecurity officers**

**DB2.** (1) The Governor must in writing appoint one or more suitably qualified public officers as biosecurity officers for the purposes of this Ordinance.

(2) The Governor may in writing appoint any public officer or employee of a statutory body to be a biosecurity officer for a particular purpose or at a particular location.

### ***DB1: Appointment of Director of Biosecurity***

*This section provides for appointment of the Director and Deputy Director of Biosecurity.*

*Some jurisdictions might want to give supervision of biosecurity to a Chief Biosecurity Officer; others might prefer to have a Department. The role of veterinary officers needs to be allowed for in either case.*

*The term 'designate' could be used rather than 'appoint', so as to avoid the need for Public Service Commission involvement. But it will be a matter for local decision how the officers are appointed (or designated).*

*In relation to subclause (4), it is for local decision whether designations (or appointments) should be published in media additional to the Gazette.*

### ***DB2: Appointment of biosecurity officers***

*This section provides for appointment of biosecurity officers, including temporary ones.*

*To achieve maximum flexibility, biosecurity officers can be appointed from any department (or Ministry) e.g. customs officers, and can be given specific functions.*

*Under subclause (2) biosecurity officers can be appointed with limited powers (e.g. fisheries inspection) or for a specified area (e.g. an outer island port.)*

*Subclause (3) requires a local decision as to the duration of a temporary post.*

- (3) The Governor may in writing appoint any suitably qualified person to be a temporary biosecurity officer for a period not exceeding [6 months] for a particular purpose or at a particular location.
- (4) (a) The powers of a biosecurity officer are as prescribed by or under this Ordinance.
- (b) A biosecurity officer must perform such duties, not inconsistent with this Ordinance, as are assigned to the officer by the Director of Biosecurity.
- (c) The Director of Biosecurity may limit the functions to be performed by a biosecurity officer to those within the officer's technical sphere of competence.
- (d) The functions assigned to an officer designated under subsection (2) or (3) must be consistent with the terms of the designation.
- (6) The Director of Biosecurity must provide every biosecurity officer with a suitable form of identification as such officer.
- (7) A person who –
- (a) upon the termination of his or her appointment as a biosecurity officer fails to surrender up any identification issued under subsection (6) within a specified period; or
- (b) copies or alters a form of identification issued under subsection (6) without the written authority of the Director of Biosecurity,
- commits an offence.  
Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both
- (8) A person who is to perform duties as a biosecurity officer under this Ordinance must be given suitable training in biosecurity control measures and in the provisions of this Ordinance before embarking on those duties.

*The identification required by subclause (6) could be a badge or card or similar.*

### **Functions of the Director of Biosecurity**

- DB3.** (1) The Director of Biosecurity must –
- (a) perform the functions assigned to the Director of Biosecurity by or under this Ordinance;
  - (b) advise the Governor on matters relating to animal and plant quarantine and biosecurity and liaise with appropriate [Department]s and statutory bodies on such matters;
  - (c) report to the Governor, [the Council Committee and the Secretary] as required by any of them from time to time;
  - (d) to the extent practicable, publicise the requirements of this Ordinance and increase public awareness of the importance of biosecurity;
  - (e) perform any other functions relating to this Ordinance that the Governor, the Council Committee or the Director by directions in writing confers on the Director of Biosecurity from time to time.

- (2) The Director of Biosecurity may –
- (a) devise a biosecurity emergency response plan to deal with an incursion of a prohibited or restricted invasive species or pest in [Jurisdiction] and keep the plan under review;
  - (b) issue directions in writing to biosecurity officers, in electronic or hard format or both;
  - (c) without liability, issue guidance to potential importers and exporters of regulated articles as to the application of this Ordinance.

(3) Before performing technical functions under this Ordinance, the Director of Biosecurity and Deputy Director of Biosecurity must consult technical section heads as appropriate.

#### **Functions of the Council Committee and Governor**

- DB4.** (1) The Council Committee –
- (a) has the functions assigned to the Committee by or under this Ordinance;

***DB3: Functions of the Director of Biosecurity***  
*This section sets out the functions of the Director generally and in relation to the Governor (and Secretary and/or Council Committee, if any).*

*Subclause (2) gives the Director powers to issue directions and guidance. If the Director is a generalist, the technical inputs would need to come from technical experts e.g. livestock officers. See the definition of “technical section head” in [Pre2].*  
*It is for consideration whether there should be a formal advisory body on biosecurity matters*

***DB4: Functions of the Council Committee and Governor***  
*This section sets out the functions of the relevant Council Committee in respect of biosecurity. (In some*

- (b) may call for reports from the Director or the Director of Biosecurity on any matter pertaining to this Ordinance or the biosecurity functions of the Government;
- (c) subject to the approval of the Governor, may arrange for *[Jurisdiction]* to be represented internationally in respect of matters relating to biosecurity.

*jurisdictions it will be a Ministry or Department that has overall policy responsibility.) Compare with 'responsibilities' in clause [Pre4A] (if wanted).*

- (2) The Governor –
  - (a) has the functions assigned to the Director by or under this Ordinance;
  - (b) may call for reports from the Director of Biosecurity on any matter pertaining to this Ordinance or the functions of the Director of Biosecurity;
  - (c) must endeavour to ensure that adequate staff and funds are available for the achievement of the biosecurity functions of the Government, in accordance with any policy laid down by the Council Committee.

### **Delegation of functions**

**DB5.** (1) The Governor may in writing delegate any of the Governor's functions, powers and duties under this Ordinance to the Director or the Director of Biosecurity, other than any legislative or appellate function or this power to delegate.

(2) Subject to subsection (3), the Director of Biosecurity may in writing delegate any of the Director of Biosecurity's functions under this Ordinance or the regulations to the Deputy Director of Biosecurity or to a named biosecurity officer or a technical section head.

(3) The Director of Biosecurity may not delegate any legislative, judicial or appellate function, the power of giving directions under section [DB3], or the power of delegation under this section, except to the Deputy Director of Biosecurity.

### ***DB5: Delegation of functions***

*It might be appropriate for the Director to delegate some administrative functions to biosecurity officers, and this section gives the necessary power. It enables various powers to be delegated and sets limits on the power of delegation.*

*Note the definition of 'Director' in [Pre2] which refers to delegated powers.*

(4) A delegation under this section may be to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(5) A delegation under this section may be made subject to any restrictions and conditions the delegator thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(6) A person purporting to perform any function by virtue of a delegation under this section must, when required to do so, produce evidence of the authority to perform the function.

(7) A delegation under this section continues in force notwithstanding a change in the identity of the delegator, until revoked.

(8) Delegations under this section must be published in the *Gazette*.

### **Biosecurity register and records**

**DB6.** (1) The Director of Biosecurity must maintain a biosecurity register and other records needed for the administration of this Ordinance and the performance of the biosecurity functions of the Government.

(2) Without limiting the matters to be recorded in the biosecurity register, details of the following must be included –

- (a) the prohibited imports list declared under section [BBC1(1)];
- (b) the restricted imports list declared under section [BBC1(3)];
- (c) the prohibited exports list declared under section [BBC1(5)];
- (d) the restricted exports list declared under section [BBC1(7)];
- (e) biosecurity points of entry and departure;
- (f) biosecurity holding areas;
- (g) biosecurity clearance agents;
- (h) biosecurity port quarantine areas;
- (i) biosecurity quarantine stations;

### ***DB6: Biosecurity register and records***

*This section requires the Director to keep extensive registers of all biosecurity decisions and activities. The keeping of registers and other records is a normal part of good administration but it is useful to have a checklist in the Ordinance. It also gives meaning to the right of access to records which is part of good governance. Subclauses (2) to (4) lists the public matters to be registered and subclause (5) lists the administrative matters.*

- (j) biosecurity approved premises;
  - (k) biosecurity import licences issued, refused and revoked under Part [BIP];
  - (l) exemptions granted under section [BIP9];
  - (m) transit waivers issued under section [BIP10], other than in-transit passenger waivers;
  - (n) biosecurity controlled areas declared under section [BIC5] or [BIC7];
  - (o) invasive species and pests declared to be notifiable under section [BIC10] (the ‘watch list’);
  - (p) occurrences of such species and pests notified under section [BIC10];
  - (q) beneficial organisms and biocontrol agents released under section [BIC11];
  - (r) contracts for hire of services, etc. entered into under section [Adm1];
  - (s) compliance agreements entered into under section [Adm4];
  - (t) agreements with landowners and others entered into under section [Adm5];
  - (u) premises approved under section [Adm6];
  - (v) agreements with countries and international organisations entered into by the Government under section [Adm7];
  - (w) notifications about the status of invasive species and of pests issued under section [Adm8];
  - (x) any other matter required by or under this Ordinance to be registered or considered by the Chief Biosecurity Officer to be necessary or appropriate.
- (3) The biosecurity register must include details of –
- (a) specifications for regulated articles made under sections [BIP4] and [BEP4], including the biosecurity measures appropriate to each type of regulated article;
  - (b) any other specification issued by the Director of Biosecurity for purposes of this Ordinance;

(c) any form approved by the Director of Biosecurity under this Ordinance.

(4) In respect of the biosecurity requirements of receiving countries, the biosecurity register must include details of –

- (a) the requirements of those countries for which biosecurity export clearance has been granted in the previous [12 months];
- (b) source material for ascertaining the biosecurity requirements of all potential receiving countries.

(5) The Director of Biosecurity must maintain records relating to the biosecurity functions of the Government, including, but not limited to –

- (a) financial and resource management records, with budgets and records of expenditure and revenue;
- (b) personnel records including the identities, duty statements and terms and conditions of employment of all biosecurity officers;
- (c) operational statistics relating to the biosecurity functions of the Government.

### **Status of biosecurity register and records**

**DB7.** (1) The biosecurity register kept pursuant to section [DB6(1)] must be made available for inspection and copying by members of the public during office hours at the office of the [Department] on payment of the prescribed fee.

(2) Subject to any other written law, the biosecurity register and other records kept under section [DB6] must only be used for the purposes of this Ordinance.

(3) A copy of an entry in the biosecurity register which is certified by the Director of Biosecurity to be an accurate copy may be produced in court as *prima facie* evidence of the entry.

*Subclause (4) requires a local decision about the register of overseas requirements.*

### ***DB7: Status of biosecurity register and records***

*Under this section, entries in a register will be admissible as evidence in court.*

*The conditions specified for the biosecurity clearance of any article thus become admissible in evidence by being recorded in a register.*

*Subclause (2) raises the question of where things should be published.*

(4) The biosecurity register and other records kept under section [DB6] may be in electronic format, provided the information is readily retrievable and is protected against unintended loss and unauthorised alteration.

*Subclause (4) should be matched up with any local legislation on electronic publication.*

(5) Entries in the biosecurity register and other records kept under section [DB6] must be kept for a period and in a manner consistent with any written law relating to public records.

## **PART [Adm] – ADMINISTRATION OF THE ORDINANCE**

## ***PART [Adm] – ADMINISTRATION OF THE ORDINANCE***

*This sets out some ancillary administrative provisions needed to allow the Ordinance to function effectively. The clauses in italics are optional and might not be needed in all jurisdictions.*

### ***Financial provisions***

***Adm 1A.*** (1) The biosecurity funds of the [Department] consist of -

- (a) money appropriated by [the Legislative Council] and paid to the [Department] in respect of biosecurity functions of the Government;
- (b) money paid to the [Department] for services rendered to any other person or body;
- (c) money paid to the [Department] by way of grants;
- (d) money derived from the disposal, lease or hire of, or other dealing with, any property vested in or acquired by the [Governor] in respect of the biosecurity functions of the Government.

### ***Adm 1A: Financial Provisions***

*This specifies the biosecurity funds available to the Department (or Ministry) and empowers the Governor (or Minister) to seek additional finance for implementing the Ordinance if necessary. It also specifies the destination of fines, fees and charges. Subclause (1) states a standard principle but might be a useful reminder.*

(2) The [Governor] may request [the Legislative Council] to provide finance for the implementation of this Ordinance in addition to an annual appropriation.

*Subclause (2) states the usual rule when money is needed urgently by a government department. These provisions will need to be checked against local public finance practice.*

(3) If –

- (a) there is an incursion of a prohibited or restricted invasive species into, or an infestation by a prohibited or restricted pest in [Jurisdiction]



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 Legislative Council] may approve the payment from the Consolidated Fund of a sum equal to [one third] of the budget of the [Department] pending a supplementary appropriation by [the Legislative Council].

(4) Fines, fees and charges payable under this Ordinance are to be paid into the Consolidated Fund and dealt with in accordance with the [Public Finance Ordinance.]

*Subclause (4) assumes there is no special fund for biosecurity; if there is to be a Biosecurity Fund, or a Compensation Fund or similar, fees and fines can be paid into it.*

(5) If a fee or charge payable under this Ordinance is not paid, then if –

- (a) the service for which the fee or charge is payable has not been provided - it may be withheld until the fee is paid;
- (b) the service has been provided - the fee or charge may be recovered as a debt owing to the Government;
- (c) 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.

### ***Powers of local authorities***

***Adm1B.*** (1) Every [local authority] may in relation to its area of jurisdiction –

- (a) carry out, for the purposes of this Ordinance, monitoring and surveillance of invasive species and pests;
- (b) propose management strategies for invasive species and pests in consultation with the [Director of Security];
- (c) if a management strategy proposed by the [local authority] has been approved by the Director of Biosecurity –
- (i) perform the functions of the management agency in respect of the strategy;
- (ii) provide for the management or eradication of prohibited or restricted invasive species and pests;

### ***Adm1B: Powers of local authorities OR Biosecurity advisory committee***

*This section either confers on local authorities certain powers in relation to biosecurity surveys and strategies or empowers the Governor (or a Minister) to establish an advisory committee on biosecurity matters.*

*Probably not both powers will be needed. As few if any OTs have local authorities, an advisory service or council of some kind might be needed.*

*Or a NGO/private body could be given a biosecurity advisory function.*

- (iii) review, extend or revoke the strategy;
- (d) advise the Director of Biosecurity on the need for and appropriate controls in a biosecurity controlled area;
- (e) assist the Director of Biosecurity in making an appropriate response to a biosecurity emergency;
- (f) generally, assist the Director of Biosecurity in any action needed under [Part BIC] (*Biosecurity Internal Control*) in respect of its area of jurisdiction.

*Note that it should not be necessary to have an advisory committee as well as local authority inputs, and the Governor can always appoint a committee administratively.*

(2) A [local authority], in consultation with the Director of Biosecurity, may gather information, keep records, undertake research, and do any other similar thing that the [authority] considers necessary or desirable to enable it to Ordinance effectively under this Ordinance.

[(3) A local authority may make by-laws for specific matters of concern to its area of jurisdiction in relation to biosecurity.]

**OR**

***Biosecurity advisory committee***

***Adm1C.*** (1) The [Governor] may appoint an advisory committee for the purposes of providing independent advice on biosecurity matters.

(2) Persons appointed to this committee must have widely recognised expertise and experience directly relevant to biosecurity matters and the operation of an efficient biosecurity service, and may include persons not in the public service and not citizens or permanent residents of [*Jurisdiction*].

(3) The composition, functions and procedures of a committee appointed under subsection (1) are as prescribed or otherwise decided by the Governor.

*Subclause (3) will be for local decision*

**Outsourcing**

**Adm1.** (1) The [Secretary/Director of Biosecurity] may, subject to rules relating to procurement, tenders and other matters governing Government contracts

- 
- (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 Ordinance;
  - (c) hire any treatment or other service deemed necessary for the effective implementation of this Ordinance.
- (2) Outsourcing of services under subsection (4) –
- (a) requires legal capacity to enter into contracts;
  - (b) does not confer on any person the powers of a biosecurity officer.

#### **Duty to coordinate**

**Adm2.** (1) Biosecurity officers and other persons administering this Ordinance should so far as possible coordinate their functions with those of officers of other government [Department]s and statutory authorities, in respect of border control, the movement of vessels and aircraft, human health, biosecurity internal control and compliance with the laws of [*Jurisdiction*] 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 postal service should –
    - (i) notify a biosecurity officer of the importation or proposed exportation of any uncleared regulated article that comes to their notice;
    - (ii) hand over to a biosecurity officer any such article which comes into their possession for inspection and treatment in accordance with this Ordinance;

#### ***Adm1: Outsourcing***

*This empowers the Department (or Ministry) to outsource aspects of biosecurity work if needed, subject to rules about Government contracts.*

*The power to hire consultants etc. is inherent in the Governor's functions, but it is useful to have it spelled out. Persons who are hired will not be public officers so will not be covered by section [MP5] as to liability. If they are to have the statutory powers of biosecurity officers, they will need to be appointed as temporary officers.*

#### ***Adm2: Duty to coordinate***

*This seeks to encourage coordination between different departments of the Government and other statutory authorities.*

*The section does not impose an obligation but indicates the legislature's wish that all governmental agencies should cooperate in biosecurity control and makes it clear that there can be 'borrowing' or duplication of functions.*

- (c) police officers, customs officers, immigration officers, postal service officers, environmental officers, agriculture officers, livestock officers, forestry officers and fisheries officers should co-operate with biosecurity officers in the performance of their functions under this Ordinance and render such assistance as they can lawfully do when called upon by a biosecurity officer.

(3) The [Secretary/Director of Biosecurity] should seek so far as possible to coordinate the biosecurity functions of the Government with those of other government [Departments] and statutory authorities dealing with the police, customs, immigration, marine, harbours, civil aviation, health, environment, fisheries, natural resources and similar services.

- (4) Nothing in this Ordinance prevents –
  - (a) the functions of biosecurity officers being performed by suitably qualified persons who hold a post under other legislation (such as, but not limited to, customs or public health or environmental legislation);
  - (b) designated biosecurity holding areas, quarantine areas and similar premises being suitable parts of premises designated or used for the purpose of some other law;
  - (c) forms for use in connection with this Ordinance being existing forms required under other law, suitably adapted;
  - (d) inspection and other biosecurity procedures being performed in conjunction with inspections under other legislation.

#### **Facilities at biosecurity points of entry or departure**

**Adm3.** (1) The operator of every biosecurity point of entry or departure in [Jurisdiction] must, to the extent possible, provide on the premises, for the purposes of this Ordinance and to the satisfaction of the Director of Biosecurity –

- (a) an area suitable for use as offices by biosecurity officers stationed at the point;

#### ***Adm3: Facilities at biosecurity points of entry or departure***

*This requires operators of points of entry and departure (i.e. ports, airports and post offices) to provide at their own expense facilities for biosecurity inspection of incoming and outgoing articles.*

- (b) adequate space for the display of notices regarding the biosecurity requirements of this Ordinance;
- (c) areas for interview and, if necessary, physical examination of incoming passengers and crew, if required;
- (d) biosecurity holding areas as designated under section [BBC4];
- (e) facilities and suitable containers for waste 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 waste holding and disposal equipment is situated;
- (h) any other facilities the Director of Biosecurity reasonably requests in writing as being needed for the performance of biosecurity functions at the point of entry or departure.

*They must also keep the area free of weeds and vermin.*

(2) The operator of a biosecurity entry or departure point, whether or not a public officer, must keep the premises and facilities mentioned in subsection (1)(e), (f) and (g) free from weeds and vermin to the satisfaction of the Director of Biosecurity.

An operator who fails to do so commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(3) No charge is payable by the [Department] 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 [Department] and the cost of such provision is a debt owing by the operator to the Government.

### ***Safe carriage and safe working environment***

***Adm3A.*** (1) If it is necessary for the purposes of this Ordinance for a biosecurity officer to be transported to a conveyance, premises or place, the owner of the conveyance, premises or place must ensure that the mode of transport provides safe carriage having regard to the conditions of travel.

### ***Adm3A: Safe carriage and safe working environment***

*This clause is optional and might not be wanted in all jurisdictions. It requires owners of ships and aircraft and warehouses to ensure that biosecurity officers have safe transport and adequate accommodation and refreshment for performing their inspection functions.*

- (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 must provide –
- (a) a safe working environment for the officer;
  - (b) adequate refreshment every 4 hours;
  - (c) overnight accommodation, if required.
- (3) The power to make regulations under section [MP9] includes the power to make regulations, consistent with the health and safety laws of *[Jurisdiction]*, to enforce the obligations stated in subsections (1) and (2).

### **Compliance agreements**

- Adm4.** (1) The Director of Biosecurity, after consulting technical section heads as appropriate, 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 Ordinance 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 Director of Biosecurity 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 may grant biosecurity clearance in respect of it, on the basis of a written certificate, given by a person authorised under the agreement

### ***Adm4: Compliance agreements***

*This provides for agreements of the kind that are used extensively in some countries in this context. Sometimes called Memoranda of Understanding, they smooth the relationship between the Director and regular importers/exporters. They do not displace the statutory rules, but can cover some of the same ground and make granting of clearance etc. speedier and more efficient. A breach of the terms of an agreement would lead to the goods in question not being cleared and to prosecution of illegal importation/exportation. Compliance agreements may relate to premises as well as movable articles, hence the word 'item' in subclause (1)(a).*

to give such a certificate, that all the measures to which the agreement refers have been complied with in respect of the article.

**Agreements with landowners, etc.**

**Adm5.** (1) The Director of Biosecurity, after consulting technical section heads as appropriate, may enter into an agreement with the owner of any area of [*Jurisdiction*], permitting the owner, in relation to that area, to –

- (a) carry out surveillance of invasive species and of pests for the purposes of this Ordinance;
- (b) propose invasive species or pest management strategies to the Director of Biosecurity;
- (c) if a management strategy proposed by the owner has been approved by the Director of Biosecurity –
  - (i) perform the functions of the Director of Biosecurity under the strategy, or appoint a suitably qualified person to perform those functions;
  - (ii) provide for the management or eradication of invasive species and pests in accordance with the strategy; and
  - (iii) with the approval of the Director of Biosecurity, review, extend or revoke the strategy;
- (e) advise the Director of Biosecurity on the need for and the nature of, appropriate controls in a biosecurity controlled area;
- (f) assist the Director of Biosecurity in making an appropriate response to a biosecurity emergency; and
- (g) generally, assist the Director of Biosecurity in any action needed under this Part in respect of the area.

(2) The Director of Biosecurity may enter into an agreement as described in subsection (1) with a person in charge of the administration of any area of [*Jurisdiction*], under a written law for conservation or environmental protection purposes, and that person has the same powers and duties as an owner under subsection (1) in respect of that area.

***Adm5: Agreements with landowners, etc.***

*This enables the Director to enter into an agreement with the owner of an island or any other area of the Jurisdiction for the owner to carry out surveillance of invasive species and pests, and propose species or pest management strategies. If the strategy is approved, the owner is given powers to implement it.*

*The owner can also advise and assist the Director in relation to biosecurity threats in respect of the land or area.*

*Similar powers are given to the Director in respect of the administrators of areas created under an environmental law, such as a marine reserve or similar.*

*Any such agreement does not displace the role of the Government in respect of biosecurity matters relating to the land or area.*

(3) A person with whom the Director of Biosecurity has entered into an agreement under subsection (1) or (2) may gather information, keep records, undertake research, and do any other thing approved by the Director of Biosecurity, that the person considers necessary or desirable to enable the person to act effectively under this Ordinance.

(4) An agreement pursuant to this section in respect of any area of *[Jurisdiction]* does not displace the rights or duties of the Director of Biosecurity and other Government agencies in respect of biosecurity internal controls and biosecurity emergencies under this Ordinance.

### **Biosecurity approved premises**

**Adm6.** (1) The Director of Biosecurity, 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 Ordinance 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 Director of Biosecurity, after inspection of the premises by a biosecurity officer, must take into account –

- (a) whether the specified action can be taken in the premises without an unacceptable biosecurity risk and without contravening this Ordinance or the conditions of any licence;
- (b) whether the premises and facilities in them are adequate to enable such action to be taken efficiently and safely;

### ***Adm6: Biosecurity approved premises***

*This provides for private premises to be used as quarantine stations or as places for the inspection, testing and treatment of animals and plants. It can be a useful device for implementing the Ordinance. Such premises are deemed to be quarantine stations.*



- (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 Ordinance and the regulations are being complied with in the premises; and
- (e) any other matter the Director of Biosecurity 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 Director of Biosecurity is satisfied that –

- (a) the premises or facilities or action taken do not comply with this Ordinance or any regulations; or
- (b) the premises are otherwise no longer suitable for approval.

(6) The provisions of this Ordinance relating to biosecurity quarantine stations (other than section [BQ2]) apply to premises approved under this section.

(7) The Director of Biosecurity must only exercise functions under this section after consulting technical section heads as appropriate.

### **International cooperation**

**Adm7.** (1) The Governor, [after consulting the Council Committees respectively responsible for foreign affairs and trade], may enter into bilateral or multilateral agreements with countries and international organisations for effective international control in biosecurity matters.

### ***Adm7: International cooperation***

*This section provides for cooperation with the international community in international activities in the field of biosecurity. It enables the Governor (or a Minister) to enter into bilateral or*

- (2) The Director of Biosecurity may, pursuant to such agreements, and after consulting technical section heads as appropriate –
- (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 Ordinance, but not so as to vary the effect of any of its provisions except as provided by this Ordinance.
- (4) The Governor must use his or her best endeavours to implement in *[Jurisdiction]* international standards and requirements relating to biosecurity, and to that end should –
- (a) designate one or more officers in the [Department] as the enquiry point and notification authority for purposes of the IPPC and the OIE;
  - (d) seek to ensure that notification and reporting requirements of the IPPC, the OIE and any other international agreement relating to biosecurity that applies to *[Jurisdiction]* are met in a timely manner.

### **Notifications**

- Adm8.** (1) The [Governor/Secretary] on the advice of the Director of Biosecurity may at any time issue a notice –
- (a) stating that a specified invasive species or a specified pest is known to exist in *[Jurisdiction]*;
  - (b) stating that, to the best of the [Governor's/Secretary's] knowledge, a specified invasive species or a specified pest does not exist in *[Jurisdiction]*;
  - (c) specifying the classification, name or identity by which any animal, animal product, plant, plant product, pest is known in *[Jurisdiction]*.

*multilateral agreements on biosecurity matters and as to how the Ordinance will work.*

*It also requires the Governor (or a Minister) to appoint an enquiry point and notification authority as required by the IPPC and the OIE, and to ensure that other international reporting requirements are met. The appointment, if by office, could be done by regulations under section [MP9].*

### ***Adm8: Notifications***

*This section recognises that all countries are concerned about invasive species and pests in other countries which might affect trade or the environment, and need to be kept informed. The section enables the Governor (or a Minister) to issue international advisory notices about the status of invasive species and pests in the jurisdiction.*

*Subclause (2) sets out the evidentiary status of such*

(2) A notice issued under subsection (1) is, for the purposes of this Ordinance, conclusive until revoked or amended under that subsection and is admissible in any court or other proceedings as evidence of the matters stated in it.

## **PART [OP] – OFFENCES AND PENALTIES**

### **Owning, etc. prohibited imports**

**OPI.** (1) A person who without lawful excuse owns or is in possession of a prohibited import commits an offence.

Penalty: A fine of [£50,000] or imprisonment for [12 months], or both.

(2) A person who releases or allows to escape into the wild any animal the importation of which is prohibited under section [BBC1(1)] commits an offence.

Penalty: A fine of [£50,000] or imprisonment for [12 months], or both.

(3) A person who plants or otherwise causes to grow in the wild any plant the importation of which is prohibited under section [BBC1(1)] commits an offence.

Penalty: A fine of [50,000] or imprisonment for [12 months], or both.

(4) Subject to subsection (5), it is a defence to a charge of committing an offence under subsection (1), (2) or (3) to prove that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) If the defence provided by subsection (3) involves an allegation that the commission of the offence was due to the Ordinance or default of another person

*notices.*

## ***PART [OP] – OFFENCES AND PENALTIES***

*This Part is concerned with enforcement of the Ordinance and specifies offences and penalties.*

*Note that attempts and incitement and other ancillary offences are not mentioned but are left to the common law or local criminal law.*

*Where penalties are suggested, they are for local decision.*

### ***Owning, etc. prohibited imports***

*This creates offences of owning, releasing, planting etc, prohibited species. There is a defence that the accused took all reasonable steps and exercised all due diligence to avoid committing the offence.*

*Subclause (2) is based on section 14 etc. of the UK Wildlife & Countryside Act, 1981 as amended by the Natural Environment & Rural Communities Act, 2006. It prohibits the release of any animal or plant listed as a prohibited import under section [BBC1(1)].*

(‘B’), the person charged (‘A’) is not, without leave of the court, entitled to rely on the defence unless, at least 7 days before the hearing, A has served on the prosecutor a notice giving any information identifying or assisting in the identification of B that was then in A’s possession.

### **Keeping, sale etc. of certain animals and plants**

**OP2.** (1) A person who –  
 (a) keeps or breeds an animal of a species to which this section applies;  
 or  
 (b) grows or propagates a plant of a species to which this section applies,  
 commits an offence.

Penalty: A fine of [£50,000] or imprisonment for [12 months], or both.

(2) A person who sells, offers or exposes for sale, or has in possession or transports for the purposes of sale –

- (a) an animal or plant to which this section applies; or
- (b) anything from which such an animal or plant can be reproduced or propagated,

commits an offence.

Penalty: A fine of [£50,000] or imprisonment for [12 months], or both.

(3) A person who publishes or causes to be published any advertisement likely to be understood as conveying that the person buys or sells, or intends to buy or sell –

- (a) an animal or plant to which this section applies; or
- (b) anything from which such an animal or plant can be reproduced or propagated,

commits an offence.

Penalty: A fine of [£50,000] or imprisonment for [12 months], or both.

(4) This section applies to a live animal or to a plant which is –

- (a) a prohibited import; or

### ***OP2: Keeping, sale etc. of certain animals and plants***

*This offence is also based on the UK Wildlife & Countryside Act, 1981 as amended.*

*It prohibits the sale, propagation or breeding from any animal or plant listed as a prohibited import under section [BBC1(1)]. The defence under section [OPI] is available for this offence also.*

(b) of a description prescribed for the purposes of this section by an order made by the Governor in Council.

(5) An order under subsection (4)(b) may be made in relation to a particular area or a particular time of the year.

(6) Subsections (4) and (5) of section [OP1] (*defence of due diligence etc.*) apply to an offence under this section as they apply to an offence under that section.

### **Dereliction of duty by officers**

**OP3.** A biosecurity officer who –

- (a) fails without reasonable excuse to perform any of his or her duties under this Ordinance or the regulations;
- (b) disposes of a regulated article or other item under the control of the officer other than in accordance with this Ordinance;
- (c) discloses information of a confidential or commercial nature which has come into the officer's possession while performing functions under this Ordinance, except for purposes of this Ordinance;
- (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.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

### **Obstruction, false information etc.**

**OP4.** A person who –

- (a) willfully fails to comply with a lawful request made or direction given by a biosecurity officer or any other person under this Ordinance;

### ***OP3: Dereliction of duty by officers***

*This section creates the offence of dereliction of duty by biosecurity officers. In effect it criminalises failure of, or over-zealous, performance by civil servants, which might be thought undesirable. However, in view of the biosecurity risks that can result, it seems appropriate in this context.*

### ***OP4: Obstruction, false information, etc.***

- (b) knowingly obstructs a biosecurity officer or any other person in the performance of his or her functions under this Ordinance;
- (c) assaults, or threatens to assault a biosecurity officer or any other person performing functions under this Ordinance;
- (d) bribes a biosecurity officer or any other person in relation to the performance of functions under this Ordinance;
- (e) makes a false or incomplete statement, whether orally or in writing, in relation to any matter under this Ordinance, intending to mislead a biosecurity officer or any other person in the performance of functions under this Ordinance;
- (f) for purposes of this Ordinance knowingly or recklessly –
  - (i) makes a false or misleading biosecurity declaration; or
  - (ii) issues any false or misleading certificate; or
- (g) knowingly or recklessly gives false or misleading information to a biosecurity officer or any other person while the officer or person is performing functions under this Ordinance,

commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

### **Fraudulent use of official documents**

**OP5.** (1) A person to whom a licence or other document is issued under this Ordinance who –

- (a) forges or unlawfully alters the document; or
- (b) allows any other person to use or attempt to use the document for any purpose of this Ordinance,

commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

(2) A person who, for the purposes of this Ordinance, produces a document which is false or misleading, knowing it to be so and intending another person to rely on it, commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

*These offences are standard provisions where there is a system for officials to ask questions, require forms to be filled in, etc. They are useful if an importer or exporter refuses to cooperate or gives false information, or if a grower of plants or breeder of animals does the same.*

*They might not be needed if there are general offences in the local law relating to obstruction of officials, making of false statements, etc.*

*These offences are referred to in clauses [VA7], [VA9], [BIP1], [BIP10], [BEP1],[PBO4], [PBO12] and [BIC1]*

### ***OP5: Fraudulent use of official documents***

*This section creates an offence similar to forgery etc. which might already be covered in the local law.*

*However, it is useful to have a self-contained code of offences which will come under the purview of the biosecurity service.*

(3) A person who uses or affixes an official stamp or seal required by or under this Ordinance, without lawful authority and with intent to defraud or deceive, commits an offence.

Penalty: A fine of [£xxx] or imprisonment for [yyy] months, or both.

### **Maximum penalties**

**OP6.** (1) The penalties prescribed by or under this Ordinance are maxima and a court may impose on an individual any penalty for an offence up to the amount of fine or period of imprisonment (or both) listed in respect of the offence.

### ***OP6: Maximum penalties***

*This section makes it clear that penalties prescribed for various offences are maxima. This might already be in the Interpretation Ordinance but is a useful reminder.*

*In the draft, penalties are stated under the offence-creating provision for immediate reference. An alternative approach is to list the penalties in a Schedule, which makes them easy to compare and creates a checklist for the key duties of passengers, importers etc.*

*A Schedule could be amended by order, if wanted. Otherwise, penalties need an amendment Ordinance.*

*It is possible to vary penalties according to the value and nature of the goods sought to be imported i.e. the severity of the threat posed, and the frequency of the offence. But the Ordinance confines itself to specifying higher maxima for corporate bodies (see [OP9].) Note that in the draft, penalties etc. are expressed in £xxx. They will need to be specified and expressed in local currency.*

(2) A corporate body that commits an offence is liable to a maximum fine of [5 times] the maximum fine for the same offence if committed by an individual, as prescribed by the respective section.

*Subclause (2) prescribes a multiplier for offences by corporate bodies – see [OP9] for the general rule about corporations. A multiplier of 5 is suggested, but the actual figure is for local decision, if wanted.*

### **Forfeiture**

**OP7.** (1) A court convicting a person of an offence under this Ordinance 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.

### **OP7: Forfeiture**

*This section provides for forfeiture of items connected with the commission of offences.*

*The precise terminology for this clause will need to be settled locally, as will the question whether real property is to be liable to forfeiture (not covered by ‘article’ as used in the draft.)*

- (2) If an article or proceeds are confiscated under subsection (1) –
- (a) the article or proceeds are forfeited to the Government;
  - (b) a forfeited article may be sold and the proceeds of sale paid into the Consolidated Fund; or
  - (c) if the article poses a biosecurity threat it must be destroyed as directed by the Director of Biosecurity, [or by the Senior Veterinary Officer in the case of an animal or animal product].
- (3) For the purposes of subsection (1), “article used in committing the offence” –
- (a) includes the package or container in which the goods are contained, but does not include passengers’ baggage unless it has been constructed or adapted for the purpose of carrying prohibited or restricted articles;
  - (b) 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 must have regard to the principle of proportionality.



### Fixed penalty system

**OP8.** (1) If satisfied that a person has committed an offence under this Ordinance or the regulations (other than an offence mentioned in subsection (2)), the Director of Biosecurity may, as an alternative to prosecuting the person –

- (a) order the person to pay a fixed penalty as described in this section; 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 in accordance with section [PBO10].

(2) The fixed penalty option is not available in respect of offences listed in a specification issued by the Director of Biosecurity under section [MP8], and they must be prosecuted in a court.

(3) The fixed penalty referred to in subsection (1) is [one-twentieth] of the maximum financial penalty prescribed for the offence, having regard to section [OP6(2)] if the accused is a corporate body.

(4) Before imposing a fixed penalty order on a person for an offence, the Director of Biosecurity must 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.

- (5) If a person on whom a notice is served under subsection (4) –
- (a) within the time specified in the notice, and in writing, admits the offence, requests the Director of Biosecurity to deal with it under this section and consents to the confiscation of the item (if appropriate) – the Director of Biosecurity may impose a fixed penalty order on the person;
  - (b) does not respond as in paragraph (a) within the time specified in the notice – the Director of Biosecurity may prosecute the offence.

### **OP8: Fixed penalty system**

*This section establishes a system of fixed penalties, if wanted. Such a system could simplify the processing of offences at the seaport and airport and limit the number of matters ending up in court.*

*A fixed penalty system allows for the fact that offenders may be in the Jurisdiction only for a short time or may be about to depart. It also reduces the amount of paperwork involved in a prosecution, which can deter enforcement.*

*The system proposed is not a ‘compounding’ system as for customs or income tax. And it is not as complex as a road traffic offence fixed penalty system, though the details may need to be prescribed in regulations.*

*If the system is to work effectively, the fixed penalty needs to be quite low, such as 1/50 of the maximum, which is less than a court would be likely to impose, even on a first offender.*

*If a higher penalty is merited, the Director/DPP can always elect to prosecute.*

*The system is not an on-the-spot fine system, as the penalty would be payable at a kiosk or office, rather than to a biosecurity officer. Payment could be at e.g. an airport, with use of appropriate forms etc.*

*Subclauses (2) and (9) require the Director to make a specification under section [MP8] as to the offences which do not attract a Fixed Penalty and as to where and when the FP should be paid. Or that can be done by regulations, if preferred.*

- (6) A fixed penalty order must –
- (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 forfeited or destroyed.
- (7) A person against whom an order is made under this section is not liable to any further criminal proceedings in respect of the offence and if in custody must be discharged.
- (8) If a fixed penalty payable under this section, or any part of it, is not paid by the date specified in the order, the sum payable becomes a debt owing to the Government and the Director of Biosecurity may request the [Chief Immigration Officer] to place a stop order on the person leaving [*Jurisdiction*] until the sum is paid; and either –
- (a) send a copy of the order to a court of competent jurisdiction, which may enforce payment of the sum outstanding as if it were a fine imposed by the court, including imposing costs and ordering confiscation as appropriate; or
  - (b) prosecute the offence.
- (9) The place or places, time and manner for payment of a fixed penalty are as set out in a specification issued by the Director of Biosecurity under section [MP8].

#### **Offences by corporate bodies**

**OP9.** (1) A corporate body cannot be imprisoned for an offence under this Ordinance or the regulations, but the maximum fine for such an offence by a corporate body is as stated in section [OP6(2)].

(2) If a corporate body commits an offence against this Ordinance, every person who is a board member or Director of Biosecurity or otherwise concerned in the

#### ***OP9: Offences by corporate bodies***

*This section clarifies a point about criminal liability of directors etc. that sometimes causes difficulty in enforcement. It says that corporations are not liable to imprisonment, but that individuals are. It also provides for increased penalties on corporations, as to which see clause [OP6(2)].*

management of the body also commits the offence as an individual, unless the person proves that –

- (a) the offence was committed without his or her consent or connivance; and
- (b) 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 [MP] – MISCELLANEOUS PROVISIONS**

### **Jurisdiction**

**MP1.** (1) Notwithstanding any limit on its jurisdiction in any other written law, the Magistrates’ Court is competent to impose any penalty or to make any order provided for in or under this Ordinance.

(2) The Director of Biosecurity may institute and conduct proceedings for an offence under this Ordinance subject to the right of the Attorney General to institute, take over or terminate criminal proceedings at any time.

(3) The Director of Biosecurity may institute and conduct proceedings for the recovery of a debt owing to the Government under this Ordinance.

(4) A prosecution under this Ordinance does not preclude the bringing of a civil action for damage caused by the importation, exportation, release, sale, breeding or other activity involving an animal or plant or an animal or plant product.

### **Abandoned goods**

**MP2.** (1) An article may be treated as abandoned and disposed of under this section if –

## ***PART [MP] – MISCELLANEOUS PROVISIONS***

*This Part contains a number of miscellaneous provisions for implementing the Ordinance.*

### ***MP1: Jurisdiction***

*This section extends the jurisdiction of the Magistrates Court to deal with offences under the Ordinance and enables the Director to take cases to court. This clause might need adapting for local court jurisdiction rules. It might even be considered desirable to make some offences indictable.*

*Subclause (4) says that civil proceedings can still be brought for activity involving animals and plants that causes damage.*

### ***MP2: Abandoned goods***

*This section says how abandoned goods will be dealt with.*

- (a) any fee or charge payable by a person under this Ordinance 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 [14 days] after the end of the quarantine period in respect of it.

*Local decisions will be needed on the appropriate time before an article is treated as abandoned; also local terminology for disposal of proceeds etc. If no regulations are made, the Director can decide the manner of disposal.*

(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 of Biosecurity [(after consulting the Senior Veterinary Officer in respect of an animal or animal product)] thinks fit that does not present a biosecurity risk.

(3) The cost of disposal of an abandoned article is a debt due 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.

### **Compensation**

**MP3.** (1) Except as otherwise provided by or under this Ordinance, 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 Ordinance or the regulations, unless negligence or malice on the part of the person taking the measure is proved.

(2) Compensation is not payable under this Ordinance, or may be reduced proportionately, if the biosecurity measures that caused the loss or damage were occasioned by a willful or negligent act or omission of the person claiming compensation.

### ***MP3: Compensation***

*This says how compensation, if provided for, will be calculated.*

*In general, compensation is not payable for the forfeiture or destruction of goods imported or exported in breach of the requirements. Compensation is however payable if land is taken for a quarantine station under clause [BQ(2)], if property is destroyed for internal control purposes under clauses [BIC4(5) and 6(6)], if property is destroyed for emergency*

- (3) If this Ordinance provides for payment of compensation in any circumstances, the compensation must be –
- (a) claimed by an application in writing to the Director;
  - (b) if not agreed, determined by the Director of Biosecurity in accordance with the market value of the item plus reasonable consequential loss;
  - (c) paid out of the funds of the [Department].
- (4) An appeal against a determination under subsection (3) lies to the Supreme Court.

### **Appeals from decisions**

- MP4.** (1) A person who is aggrieved by a decision of a biosecurity officer under this Ordinance made at a biosecurity point of entry or departure, in a biosecurity holding area or at a biosecurity quarantine station, may within 24 hours appeal to the Director of Biosecurity.
- (2) A person who is aggrieved by a decision of the Director of Biosecurity under subsection (1), or any other decision of a biosecurity officer, may within 7 days appeal in writing to the [secretary].
- (3) A person who is aggrieved by a decision of the [Secretary], including a decision on an appeal under subsection (2), may within 21 days appeal in writing to the Governor.
- (4) The lodging of an appeal in respect of an article does not prevent biosecurity measures being taken in respect of the article to reduce or eliminate the biosecurity risk posed by the article, and section [MP5] applies to the taking of such measures.
- (5) The person deciding an appeal must give the appellant and the respondent the opportunity to be heard, in writing or in person, and to produce evidence and call witnesses, and must give reasons for the decision on the appeal.

*purposes as in clauses [BE3(5) and 4(6)], or if negligence or malice by a biosecurity officer is proved. The mechanism provided needs to be supplemented by regulations under [MP9].*

### ***MP4: Appeals from decisions***

*This section says how appeals from decisions made under the Ordinance are to be dealt with. It provides for administrative appeals from decisions of biosecurity officers. The system needs to deal with on-the-spot appeals by passengers at an airport as well as more major issues raised by commercial importers. The hierarchy of appeals, and the time-limits, are a matter for local policy but the scheme outlined here would work in legislative terms. An alternative scheme would be to have an appeals tribunal for the more major decisions, so as to remove technical issues from the Governor (or Minister.) (There might already be a general administrative appeals system in the Jurisdiction.) The word 'final' should not be taken to oust the jurisdiction of the courts on a judicial review.*

(6) If an appeal involves a technical issue, the person hearing the appeal must obtain the advice of the relevant technical section head, not being the person appealed from.

(7) An appeal against a decision of the Governor under this section lies to the Supreme Court.

### **Limitation of liability**

**MP5.** (1) Neither the Governor, the Director of Biosecurity nor any biosecurity officer or other public officer is personally liable for action taken under this Ordinance in good faith and without negligence.

(2) A breach of a duty imposed on the Governor, the Director of Biosecurity, a biosecurity officer or any other public officer by or under this Ordinance does not give rise to any civil liability except as provided by or under this Ordinance.

### **Evidence and language**

**MP6.** (1) In any proceedings under this Ordinance –

- (a) a document purporting to have been issued by the Governor or the Director of Biosecurity, or by a biosecurity officer or other public officer for the purposes of this Ordinance, is presumed, until the contrary is proved, to have been duly executed or signed by that person;
- (b) a copy of or extract from any such document and certified by a biosecurity officer to be true and correct is, unless the contrary is proved –
  - (i) presumed to be a true and correct copy or extract;
  - (ii) on its production in court *prima facie* proof of any matter contained in it.

### ***MP5: Limitation of liability***

*This section says that public officers taking action under the Ordinance in good faith are not liable, so the Government and Director are not liable for things done under the Ordinance except as stated.*

*The corollary is that negligent or malicious acts would incur liability, which would normally be at common law.*

*The limitation of liability does not apply to persons hired under clause [Adm1].*

### ***MP6: Evidence and language***

*This section provides for the evidentiary status of certificates and other documents created or used under the Ordinance. The provisions are similar to those usually found in legislation relating to e.g. pesticides and pharmaceuticals. It is for consideration whether the rules relating to documents certified by public officers should apply to other persons who perform functions under the Ordinance e.g. consultants hired under clause [Adm1], or owners of approved premises etc.*

- (2) In any proceedings under this Ordinance –
- (a) a certificate, in a form approved by the Director of Biosecurity, of the results of any test conducted on an article by the person who conducted the test may be tendered in evidence and is *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 and is *prima facie* evidence of the facts stated in it if the procedure prescribed in relation to the sample has been substantially followed.
- (3) Section [DB8] governs the evidential status of the biosecurity register and records kept under this Ordinance.
- (4) The official quarantine stamp must be used in conjunction with the signature of an authorised officer to authenticate documents issued under the Ordinance or the regulations.
- (5) Documents submitted for purposes of this Ordinance must be in English or be accompanied by a certified translation into English.

#### **Publication of orders and notices**

- MP7.** (1) Regulations and legislative orders made under this Ordinance must be published –
- (a) in the *Gazette*;
  - (b) at the office of the [Department] and on the Government website, if any;
  - (c) on any radio or television station that broadcasts in [Jurisdiction];
  - (d) in any newspaper that circulates in [Jurisdiction];
  - (e) at any Government offices in or adjacent to the affected area,
- and made available to the public for inspection or purchase.

#### ***MP7: Publication of orders and notices***

*This section states the rules about publication of regulations and orders made under the Ordinance; they should be given wide publicity in the areas affected by them, and must also be published in the Gazette.*

*The rule about Gazettal is the usual one for legislative instruments, but it is useful to have it restated here. Newspapers etc. are mentioned because Gazettal is only a formal step for evidentiary purposes and does not in practice inform the public.*

(2) Regulations and legislative orders made under this Ordinance do not take effect until published in the *Gazette*, unless otherwise provided.

*The term 'affected area' in (1)(e) is probably not relevant for small island territories.*

(3) Unless otherwise provided, and subject to subsection (4), notice required by this Ordinance to be given may be given electronically –

*Subclause (3) enables notices and instructions to be promulgated by e-mail or website, as well as the more traditional methods. There might be similar provisions in other local legislation that can be used instead.*

- (a) by a person to the Director of Biosecurity;
- (b) by the Director of Biosecurity to a person, if the person has given the Director of Biosecurity or Director an electronic address for receipt of such notices.

(4) If service of a notice or other document on a person is to be proved in a court, it must be effected –

- (a) by personal service on the person; or
- (b) by registered post to the address of the person given to the Director of Biosecurity, in which case service is presumed to have been effected 2 days after posting.

(5) The Director of Biosecurity may give instructions and directions to biosecurity officers by electronic means.

(6) A printed copy of an electronic record of a notice, instruction or direction given or received by electronic means is *prima facie* evidence of the notice if the record purports to have been made at the time of sending or receipt.

### **Specifications**

- MP8.** (1) The Director of Biosecurity may in writing specify –
- (a) documents and forms for use in connection with this Ordinance, including the format of documents transmitted by electronic means;
  - (b) the procedures for applying for and issuing licences and other documents;
  - (c) the manner and language of markings on containers of incoming and outgoing regulated articles;

### ***MP8: Specifications***

*Specifications can be issued by the Director under [BIP4] and [BEP4] and various other provisions as well as this section. (The term does not include every power to 'specify', however.) This section defines their status; they are not strictly legislative but must be*



- (d) the methods of handling, sealing, treating and disposing of containers of regulated articles;
- (e) all other matters that may or must be specified, as provided for in or under this Ordinance.

*entered in the biosecurity register and given due publicity.*

(2) If a matter is prescribed by regulations or an order, the regulations or order take precedence over a specification on the same matter.

(3) Specifications made under this Ordinance must be –

- (a) entered in the biosecurity register maintained under section [DB6(2)] and do not take effect until so entered;
- (b) included in any directions given to biosecurity officers pursuant to section [DB3(2)(b)]; and
- (c) made available to the public for inspection or purchase.

(4) Notice that a specification has been made or changed under this Ordinance must be published in the Gazette and at the office of the Directorate.

(5) Section [DB7] governs the evidential status of a specification contained in the biosecurity register.

### **Regulations**

**MP9.** (1) The Governor in Council may make regulations not inconsistent with this Ordinance for the effective implementation of this Ordinance and the performance of the biosecurity functions of the Government.

(2) Without limiting subsection (1) or affecting any other regulation-making power in this Ordinance, regulations made by the Governor in Council may –

- (a) prescribe fees and charges for the biosecurity services provided by the Government;
- (b) prescribe the method of taking and analysing samples, recording the results and disposing of the samples;

### ***MP9: Regulations***

*This section enables the Governor in Council to make regulations to supplement the provisions of the Ordinance. The usual procedures will need to be followed, such as consulting ExCo, laying before the legislature etc.*

*The regulations should prescribe fees and charges for biosecurity services. They could prescribe forms, though these could be simply ‘approved’ by the CBO. The list does not need to cover everything that the*

- (c) prescribe the manner of disposal of abandoned goods under section [MP2];
- (d) regulate the procedure on appeals under section [MP4] (other than appeals to the Supreme Court);
- (e) for the purpose of this Ordinance –
  - (i) prescribe the kinds of crop, tree or plant, or variety of them that may or may not be grown, or that may or may not be destroyed;
  - (ii) provide for the destruction of any diseased crop or agricultural produce with or without compensation to the owner or owners of it;
  - (iii) control the transportation, preparation for and marketing of agricultural produce for sale;
  - (iv) authorise the inspection of any crop or agricultural produce;
  - (v) provide for the control and destruction of any insect, fungus or other pest destructive to crops, plants or livestock;
  - (vi) provide for the control and destruction of weeds and other noxious plants;
- (f) regulate the disposal of waste and second-hand clothing and bedding so as to minimize any biosecurity risk;
- (g) provide for the placing and use of amnesty bins or other containers for regulated articles at points of entry;
- (h) authorise and regulate the use of force and firearms by biosecurity officers;
- (i) authorise and regulate the use of traps and pesticides by biosecurity officers;
- (j) prescribe the international codes of practice that are to be observed in respect of biosecurity control;
- (k) prescribe any other matter which this Ordinance requires to be prescribed or which is necessary for carrying out or giving effect to this Ordinance.

*Ordinance says is to be prescribed; the items listed are those that might well be needed to give the Ordinance full effect. The items in subclause (2)(e) are included so that local agricultural produce control legislation can be repealed and replaced.)*

*Local policy decisions are needed as to what regulations are needed to implement the Ordinance.*

(3) Before making regulations under this section, the Governor in Council must consult–

- (a) the Director of Biosecurity; and technical section heads as appropriate;
- (b) technical section heads and other government [Departments] and statutory authorities as appropriate.

*The duty to consult in subclause (3) could include bodies and individuals with relevant expertise.*

(4) Regulations made under this section may create offences for breaches of them and prescribe maximum penalties not exceeding a fine of [£50,000] for an individual or [£250,000] for a corporate body.

*The figures in subclause (4) are for local decision.*

### **Repeals and savings**

**MP10.** (1) The following Ordinances and any items of subsidiary legislation made under them (“the repealed laws”) are repealed –  
*[Insert local items needing repeal]*

### ***MP10: Repeals and savings***

*This section provides for the repeal of existing laws governing the import and export of animals and plants and their produce (though not drugs and pharmaceuticals) and the movement of animals and plants in the Jurisdiction.*

(2) Subsidiary legislation made under the repealed laws that could be made under this Ordinance (leaving aside any requirement for advice) continue in force as if made under this Ordinance until amended, replaced or repealed under this Ordinance, unless and to the extent that –

- (a) the matter is provided for in this Ordinance;
- (b) the subsidiary legislation is inconsistent with the provisions of this Ordinance or any other written law.

*There may also be candidates for part repeal, such as the Quarantine Ordinances, if they relate to animal and plant quarantine as well as human health.*

(3) Provisions of regulations made under the repealed laws dealing with the treatment of animals, plants and their products on arrival in *[Jurisdiction]* –

- (a) are deemed to have been made by the Director of Biosecurity as specifications under section [BIP4];
- (b) may be varied by the Director of Biosecurity under that section;
- (c) if included in the biosecurity register are governed by section [BIP8] as to their evidential status.

*The saving of subsidiary legislation saves the existing regulations made under the repealed Ordinances but only so far as they are consistent with this Ordinance. (This might already be in the Interpretation Ordinance.) It would be better to make new regulations to come into force at the same time as this Ordinance, if possible (e.g. handling of containers. Existing regulations which set out the requirements for treatment of imported animals and plants should be replaced by specifications under [BIP4] or [BEP4].*

(4) In particular, but without limiting subsection (3), the [xxx] Regulations made under the [yyy] Ordinance continue in force as a specification made under this Ordinance until replaced under this Ordinance.

(5) Delegations, directions, notices, agreements and other administrative actions or decisions issued or made by officers under the repealed laws which could be issued or made by equivalent officers under this Ordinance continue to have effect as if issued or made under this Ordinance until varied or revoked under this Ordinance.

### **Transitional provisions**

**MP11.** (1) A document equivalent to an import licence that has been issued under any provision of the repealed laws remains in force until it expires in accordance with its terms, or until revoked under this Ordinance.

(2) Any bond, agreement, instrument or arrangement to which the Government is a party subsisting immediately before the commencement of this Ordinance and relating to the biosecurity functions of the Government continues to have effect after that date and is enforceable by or against the Government as if it had been entered into under the provisions of this Ordinance.

(3) Subject to subsection (4), any action, arbitration, proceeding or cause of action that relates to a biosecurity function of the Government and that immediately before the commencement of this Ordinance is pending or existing by, against, or in favour of the Government, or to which the Government is a party, may be continued and enforced under this Ordinance.

(4) A prosecution for an offence committed against a repealed law must be brought and continued under that law.

### **Consequential amendments**

**MP12.** (1) A reference in another written law to any of the repealed laws is, to the extent possible, to be read as a reference to this Ordinance.

*Regulations governing internal controls can lapse if they are covered by Part [BIC]. The savings include delegations of functions, but do not include the appointment of officers. These should be done (or re-done) at an early stage for certainty.*

*Local policy decisions are needed as to the repeals and consequential amendments needed.*

### ***MP11: Transitional provisions***

*This section makes transitional provisions for the smooth introduction of the Ordinance.*

*Transitional provisions relate to laws or bodies that will disappear once the Ordinance is in place (as distinct from savings which keep them alive.)*

*Machinery may therefore be needed to achieve a smooth transition from the existing regime to a new one. Power to make regulations to assist this may be useful.*

*These matters will require more detailed consideration once the Bill is nearing enactment.*

### ***MP12: Consequential amendments***

(2) A reference in another written law to an officer exercising functions under a repealed law is, to the extent possible, to be read as a reference to a biosecurity officer exercising equivalent functions under this Ordinance.

(3) [Addition of the Director of Biosecurity to any list of pensionable offices or in e.g. bribery and corruption legislation, if it is a new post.]

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*This makes consequential amendments to other Ordinances as a result of the enactment of the Bill. A search of the local statute book will be needed to find any references to the repealed Acts and replace them by references to this Ordinance.*

*More substantial amendments may also be needed e.g. national disaster legislation, customs and immigration legislation, as to procedures, powers of border officials etc.*

***MP13: Amendment of Schedule***

*If there is to be a Schedule of Penalties (see note to clause [OP6] above), there will need to be a clause giving the Governor in Council power to amend it by order. This device is generally avoided as a 'Henry VIII' clause but is established in precedent for matters such as penalties.*

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