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1 March 2024



Enacted by the Governor of the Islands  
of Pitcairn, Henderson, Ducie and Oeno

## BIOSECURITY ORDINANCE

DATE MADE: *1 March 2024*  
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An Ordinance to control the entry into, introduction, or establishment within the Pitcairn Islands of invasive species, pests and diseases of animals and plants and their products, and to make ancillary and related provisions.

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**PART I – PRELIMINARY PROVISIONS**

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|----------------------|---|
| Commencement         | 1. –(1) This Ordinance shall be brought into force by Order by the Governor.<br><br>(2) Different parts of this Ordinance may be brought into force on different days.                    |
| Short title          | 2. This Ordinance is the Biosecurity Ordinance 2023.  |
| Overview and purpose | 3. –(1) This Ordinance establishes a regime for biosecurity control which–<br><br>(a) regulates the import of goods that pose, or may pose, a biosecurity threat to the Pitcairn Islands; |

- (b) requires that prohibited and controlled imports not be made into the Pitcairn Islands other than in accordance with this Ordinance;
- (c) to that end, controls the arrival of vessels, the unloading of cargo and baggage from them, and the disembarkation of passengers and crew members.

(2) The purposes of the biosecurity control regime established by this Ordinance are—

- (a) to facilitate the safe import of goods including animals, plants and animal and plant products;
- (b) to protect the Pitcairn Islands against the entry of non-native species and of pests and diseases;
- (c) to protect each of the islands making up the Pitcairn Islands against the entry of non-native species and of pests and diseases from the other islands.

(3) Any person exercising powers conferred by this Ordinance must do so only for the purposes set out in subsection (2).

(4) Where this Ordinance provides that a “precautionary approach” may be taken in respect of a power conferred by this ordinance, the person exercising that power is entitled to do so in a manner intended to respond to a perceived biosecurity risk or biosecurity threat notwithstanding the absence of relevant scientific information, including biosecurity risk assessment, as to the likely impact of that risk or threat.

Interpretation

4. –(1) In this Ordinance, unless the context otherwise requires, the terms listed in Schedule 1 have the meanings given to them in that Schedule.

(2) For purposes of this Ordinance, “the Pitcairn Islands” includes the waters of the Pitcairn Islands as defined in Schedule 1.

(3) In this Ordinance, “regulated article” means –

- (a) any animal or animal product;
- (b) any plant or plant product or material;
- (c) any living organism, whether modified or not;
- (d) soil, sand, gravel and aggregate;
- (e) any genetic material;
- (f) human remains;
- (g) any host material;

- (h) any clothing, machinery or other article that contains or has adhering to it anything mentioned in subsections (a), (b), (c), or (d);
- (i) garbage;
- (j) any other article, substance, goods, or thing declared by order under section 12 to be a prohibited import or a controlled import.

Application

5. –(1) This Ordinance applies to every person in the Pitcairn Islands, irrespective of the person’s nationality or citizenship.

(2) This Ordinance applies to persons, conveyances, containers and goods outside the Pitcairn Islands to the extent needed for its effective enforcement.

Ordinance binds the Crown

6. This Ordinance binds the Crown in right of the Government of Pitcairn (“the Government”), but nothing in this Ordinance renders the Crown liable to prosecution for an offence under this Ordinance or to proceedings under the fixed penalty provisions for offences.

Biosecurity functions of Government

7. –(1) The biosecurity functions of the Government of Pitcairn are to –

- (a) protect the Pitcairn Islands against the entry and spread of non-native species and of pests and diseases adversely affecting the economy, human health and the environment;
- (b) prevent the establishment and spread of non-native species and of pests and diseases and the release of organisms that might adversely affect the economy, human health and the environment.

(2) The Government must seek to implement in the Pitcairn Islands the international obligations that apply to the Pitcairn Islands in respect of biosecurity and biodiversity.

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

(4) 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.

(5) In implementing this Ordinance, the Government must have regard to –

- (a) Part 2 of the Pitcairn Constitution, and in particular section 19 (the right to protection of the environment);
- (b) the precautionary approach; and

(c) the views of the Pitcairn community.

(6) The functions of the Chief Biosecurity Officer or of a biosecurity officer in –

(a) issuing documents or granting clearance; or

(b) biosecurity inspection and treatment of vessels, containers, baggage and articles,

may be performed by a person or authority outside the Pitcairn Islands authorised by the Governor to perform that function.

Relationship  
with other  
written laws

8. –(1) This Ordinance is in addition to and does not derogate from any other written law that applies to the Pitcairn Islands.

(2) The issue of a permit or licence under any other written law does not displace the requirement under this Ordinance for biosecurity import clearance of imported regulated articles, including as appropriate the issuing of permits and other documents.

(3) This Ordinance does not remove or abridge any power or authority of a police officer or customs officer under any other law applicable in the Pitcairn Islands.

(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 fulfil the purpose of this Ordinance.

## PART II – BIOSECURITY OFFICERS

Appointment of  
Chief  
Biosecurity  
Officer and  
biosecurity  
officers

9. –(1) The Governor may, after consultation with the Island Council, appoint:

(a) a Chief Biosecurity Officer; and

(b) additional biosecurity officers,

who shall upon appointment be officers of the Pitcairn Public Service.

(2) Every police officer is *ex officio* a biosecurity officer and may exercise the powers of a biosecurity officer under this Ordinance if requested by a biosecurity officer.

Functions of  
Chief  
Biosecurity  
Officer

10. –(1) The Chief Biosecurity Officer must –

(a) perform the functions assigned to that office under this Ordinance;

- (b) advise the Governor and the Island Council on matters relating to animal and plant quarantine and biosecurity and liaise with other public officers as appropriate;
- (c) report to the Governor and Island Council as required by either of them from time to time;
- (d) to the extent possible, 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 by directions in writing confers on the Chief Biosecurity Officer from time to time.

(2) The Chief Biosecurity Officer may –

- (a) issue in writing a manual of instructions for biosecurity officers, in electronic or hard format or both;
- (b) without liability, issue guidance to potential importers and as to the application of this Ordinance.

Powers of  
biosecurity  
officers

11. –(1) In addition to the other powers conferred on a biosecurity officer by or under this Ordinance, a biosecurity officer may exercise any of the powers set out in Schedule 2 to this Ordinance, in the manner set out in that Schedule.

(2) The powers conferred by or under this Ordinance on biosecurity officers must be exercised only to achieve the biosecurity functions of the Government.

(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.

(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, vessel, container or article.

(5) A biosecurity officer exercising powers under this Ordinance 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.

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

- (a) any regulations made 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 10(1)(e).

### **PART III – PROHIBITION AND CONTROL OF IMPORTS**

Governor may specify prohibited imports and controlled imports

12. –(1) The Governor, after consultation with the Island Council and Chief Biosecurity Officer, may by notice specify any category of regulated articles that is prohibited for all purposes (a “prohibited import”).

(2) The Governor, after consultation with the Island Council and Chief Biosecurity Officer, may by notice declare any category of regulated articles to be one that is permitted subject to conditions specified by the Chief Biosecurity Officer under (a “controlled import”).

(3) Before advising the Governor under subsection (1) or (2) the Chief Biosecurity Officer must make a biosecurity risk assessment in respect of the relevant category of regulated articles.

(4) A notice under subsection (1) or (2) must be published in the manner set out in section 50.

(5) A notice under subsection (1) or (2) may make different provisions for different cases and, in particular, for different:

- (a) times of the year;
- (b) types of regulated articles;
- (c) circumstances or purposes;
- (d) areas or places.

(6) In making a notice under subsection (1) and (2), the Governor must not discriminate in an arbitrary and unjustifiable manner between countries or areas where the same conditions prevail.

(7) In making a notice under subsection (1) or (2) the Governor must consider:

- (a) the advice of the Chief Biosecurity Officer;
- (b) any expert opinion sought by the Governor;
- (c) the views of the Island Council.

### *Prohibited imports*

- Prohibition and control of imports
13. –(1) A person may not import a prohibited import unless a biosecurity import exemption has been granted to that person in respect of that article.
- (2) A person may not import an article that is a controlled import otherwise than in accordance with the specified conditions for that article, unless a biosecurity import exemption has been granted to that person in respect of that article.
- Biosecurity import exemptions
14. –(1) The Chief Biosecurity Officer may in writing exempt any article or class of articles from any or all of the biosecurity import requirements that would otherwise apply to that article or class of articles.
- (2) A request for a biosecurity import exemption must be accompanied by relevant documents and made in writing to the Chief Biosecurity Officer, in sufficient time to allow the Chief Biosecurity Officer to give due consideration to the request.
- (3) An exemption under subsection (1) may specify the conditions on which the article or class of articles is exempt. If the conditions are not met the exemption ceases to apply.
- (4) The Chief Biosecurity Officer may only grant an exemption under subsection (1) if satisfied that the biosecurity risk to the Pitcairn Islands is not increased as a result.
- (5) An exemption under subsection (1) applies only to a single importation.
- (6) Articles exempted from biosecurity import requirement under this section are not exempt from the requirement for biosecurity import clearance.
- (7) Official importations of regulated articles by the Government are subject to any biosecurity import conditions imposed under section 16, but any fee payable may be waived in respect of a regulated article to be imported or introduced for the purpose of –
- (a) research or experiment to improve the quality of plants or animals in the Pitcairn Islands and the products to be derived from them; or
  - (b) any botanical or zoological garden or display approved by the Governor.

*Import specifications and licences*

Import control requirements

15. Any person wishing to import into Pitcairn a controlled import must –

- (a) Comply with conditions and requirements set out in any applicable biosecurity import specification issued under section 16 in relation to that category of controlled import; or
- (b) Where no issued specification is applicable, obtain a biosecurity import permit under section 17 and comply with any conditions set out in that permit.

Import specifications

16. –(1) The Chief Biosecurity Officer may specify in respect of any regulated articles that are not prohibited imports the conditions they must meet if biosecurity import clearance is to be granted, including the documents that must accompany the articles, any fee payable, and any biosecurity measures that must be applied to them before or on their arrival in the Pitcairn Islands.

(2) Specifications under subsection (1) –

- (a) may be different for different types and quantities of regulated article;
- (b) may be by reference to the country or area of origin of the article;
- (c) must only be those reasonably necessary to reduce or eliminate the biosecurity risk to the Pitcairn Islands presented by the article;
- (d) may be in the form and use the wording of import health standards;
- (e) may make provision for multiple entries of species.

(3) Before issuing a specification under subsection (1), the Chief Biosecurity Officer must –

- (a) make a biosecurity risk assessment;
- (b) have regard to the requirements of international standards relating to biosecurity matters;
- (c) have regard to the resources available in the Pitcairn Islands for biosecurity control.

(4) The biosecurity risk assessment needed for making a specification under this section may be performed by any qualified person (other than the importer) at the request of the Chief Biosecurity Officer.

(5) Specifications 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 or guidance about 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 (3) applies to the changing of a specification as it applies to the making of a specification.

(8) Specifications made under this section, and any change in a specification, must be published in the manner set out in section 50(2).

(9) The Chief Biosecurity Officer may specify as a condition of entry into the Pitcairn Islands a period of quarantine at an approved quarantine facility located outside the Pitcairn Islands where plants or animals are screened for invasive species, pests and diseases prior to entry into the Pitcairn Islands.

(10) A person proposing to import a regulated article of a type that is not the subject of a biosecurity import specification must apply for a biosecurity import permit in respect of the article.

Import permits

17. –(1) If a biosecurity import permit for a regulated article or consignment of regulated articles is specified as a requirement under section 16(1), or is required by section 16(10), an application for a permit must be made to the Chief Biosecurity Officer, in a form approved by the Chief Biosecurity Officer, before the article or consignment leaves the country or area of origin.

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

- (a) include evidence of the country or area of origin of the article or consignment;
- (b) state the nature and amount of the article or consignment;
- (c) state the expected date of arrival in the Pitcairn Islands; and
- (d) give any other information the Chief Biosecurity Officer reasonably requires to make a biosecurity risk assessment.

(3) If satisfied of the matters set out in subsections (1) and (2), and that the proposed importation would not pose an unacceptable biosecurity risk, the Chief Biosecurity Officer must as soon as practicable issue a biosecurity import permit.

(4) A biosecurity import permit must set out any conditions on which it is issued and failure to comply with them will render the permit invalid.

Biosecurity  
vessel arrival  
declaration

18. –(1) In order to obtain biosecurity landing clearance for a vessel, and if requested by the Chief Biosecurity Officer, the master must –

(a) make to the Chief Biosecurity Officer a biosecurity vessel arrival declaration; and

(b) if so requested, permit an inspection and search of the vessel.

(2) A biosecurity vessel arrival declaration, if required, must state the matters listed in Schedule 3.

(3) A biosecurity vessel arrival declaration –

(a) must be made before landing on or anchoring within half a nautical mile of any of the islands within the Pitcairn Islands;

(b) may be made by electronic means, in accordance with any written requirements of the Chief Biosecurity Officer;

(c) may be made in conjunction with or as part of a declaration made for customs or other border control purposes.

(4) The Chief Biosecurity Officer may require biosecurity measures to be taken in respect of a vessel before it obtains biosecurity landing clearance, including disinfestation or disinfection of the vessel and cargo and showing of a video film to passengers.

Biosecurity  
vessel  
inspection

19. –(1) The master of an incoming vessel must, if so requested by a biosecurity officer –

(a) if not already at Pitcairn Island, proceed to Pitcairn Island;

(b) permit a biosecurity officer to board and search the vessel and inspect or cause to be inspected any area of the vessel (including the hull and propellers);

(c) apply or cause to be applied to the vessel any treatment that the Chief Biosecurity Officer requires in writing;

(d) provide to a biosecurity officer the log, cargo manifest, bill of lading, stores list, passenger list, crew list and any other document that is in and relates to the vessel and that the officer reasonably requests for the purposes of this Ordinance.

(2) The master of an incoming vessel who fails to comply with a provision of subsection (1) when required to do so will be refused landing clearance for the vessel.

(3) If, after searching an incoming vessel and inspecting its documents as provided by subsection (1), a biosecurity officer is satisfied that it –

(a) does not have on board any prohibited import or any prohibited or controlled non-native species;

- (b) is not infected or infested with a prohibited or controlled pest or disease; and
- (c) does not have on board any regulated article that might pose a biosecurity threat to the Pitcairn Islands,

the officer must, subject to section 20, grant biosecurity landing clearance to the vessel.

(4) If, in respect of a vessel whose master has made the declaration required under section 18(1), the Chief Biosecurity Officer does not impose any requirement under section 19(1) the officer must grant biosecurity landing clearance to the vessel.

Biosecurity port quarantine of vessels

20. –(1) If, after searching an incoming vessel under section 19, or for any other reason, a biosecurity officer reasonably suspects that the vessel –

- (a) has on board any prohibited import or any prohibited or controlled non-native species;
- (b) is infected or infested with a prohibited or controlled pest or disease; or
- (c) has on board any regulated article that might pose a biosecurity threat to the Pitcairn Islands,

the officer may declare the vessel to be in biosecurity port quarantine.

(2) The Chief Biosecurity Officer may give written directions to the master of a vessel in biosecurity port quarantine as to –

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

(3) The cost of keeping a vessel 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.

Biosecurity port quarantine clearance of vessels

21. –(1) Biosecurity landing clearance for an incoming vessel in biosecurity port quarantine must be refused until any requirement of biosecurity port quarantine has been completed.

(2) If satisfied that –

- (a) a vessel in biosecurity port quarantine, including its cargo, does not have on board any prohibited import or any prohibited or controlled non-native species and is free from prohibited or controlled pests and diseases; and

(b) any potential biosecurity risk from ship's stores and other regulated articles on the vessel is suitably contained,

(c) a biosecurity officer must, subject to subsection (4), grant biosecurity port quarantine clearance for the vessel to land crew members, passengers and goods.

(3) Biosecurity port quarantine clearance of a vessel has the same effect as biosecurity landing clearance.

(4) If the Chief Biosecurity Officer reasonably believes that a vessel, whether or not in biosecurity port quarantine, poses a serious biosecurity threat to the Pitcairn Islands which cannot adequately be dealt with by appropriate biosecurity measures, the Chief Biosecurity Officer may in writing direct the vessel to leave the Pitcairn Islands.

(5) No compensation is payable for any loss or destruction or consequential loss caused by a vessel being detained in quarantine, or as a result of a direction to leave the Pitcairn Islands, unless negligence or malice is proved.

Environmental obligations of masters

22. –(1) The master of every incoming vessel must take all reasonable steps to –

(a) prevent any live animal on board the vessel from landing unless permitted by an appropriately qualified biosecurity officer, and then only as directed by the officer;

(b) ensure that no ships' stores are removed from the vessel while it is in the Pitcairn Islands, except under and in accordance with the directions of a biosecurity officer.

(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; or

(b) bilge water, sewage or foul wastewater,

is discharged from the vessel into the waters of the Pitcairn Islands.

(3) The obligations in subsections (1) and (2) 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;

(c) any other written law,

in respect of discharges from a vessel into the waters of the Pitcairn Islands.

*Passengers and crew members*

Passengers and crew members

23. –(1) In order to obtain biosecurity entry clearance, passengers and crew members 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 Chief Biosecurity Officer and contain all required particulars relating to the person and any baggage that accompanies the person.

(3) The passenger arrival declaration form must include any –

- (a) article of clothing worn on the body;
- (b) article attached or connected to the body or clothing; or
- (c) suitcase or other container of personal baggage,
- (d) which consists of or includes a regulated article listed on the form.

(4) A single declaration under subsection (2) 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.

(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.

If the officer does not take any of those steps, the passenger or crew member is deemed to have biosecurity entry clearance.

(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) A search of a person under subsection (6) must be carried out by an officer of the same sex as the person searched.

(8) A person may be detained under subsection (6) only for as long as is required to question and search the person and to conduct the further inspection and application of biosecurity measures.

(9) A passenger or crew member who fails to –

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

(b) submit baggage for inspection when so directed under subsection (5),

will be refused biosecurity entry clearance.

(10) The master of the vessel on which a person refused biosecurity entry clearance arrived in the Pitcairn Islands must arrange for the removal of that person and their baggage from the Pitcairn Islands at the earliest possible opportunity.

(11) Pending removal, a person refused biosecurity clearance must –

(a) disembark from the incoming vessel only with the permission of a biosecurity officer and in accordance with any conditions that a biosecurity officer may reasonably impose to control the biosecurity threat posed by that person to the Pitcairn Islands;

(b) apply to the person's baggage such biosecurity measures as are necessary.

*Intra-Island Biosecurity for Passengers and Vessels Departing Pitcairn for other islands in the Pitcairn Islands*

Intra-Island biosecurity for vessels and passengers departing Pitcairn Island for other islands in the Pitcairn Islands

24. –(1) The master of any vessel who is on Pitcairn Island and who intends to proceed to any or all of Henderson, Ducie or Oeno Islands must not depart for or land on any of those Islands without intra-island biosecurity entry clearance having been given for that vessel, and for every passenger and crew member travelling upon it, in accordance with this section.

(2) The master of any such outgoing vessel must, before departing, make a biosecurity vessel arrival declaration in respect of its intended destination, and each passenger or crew member, before boarding, must make a passenger arrival declaration in respect of their intended arrival at that destination, containing the information required by sections 18 and 23 respectively.

(3) The master of the outgoing vessel must, if so required, comply with section 19(1) and a master who fails to comply will be refused an intra-island biosecurity landing clearance for the vessel.

(4) If after searching the outgoing vessel a biosecurity officer is satisfied that it does not have on board –

- (a) any prohibited import or any prohibited or controlled non-native species;
- (b) is not infected or infested with a prohibited or controlled pest or disease; and
- (c) does not have on board any regulated article that might pose a biosecurity risk to the island or islands that are the intended destination,

the officer must grant intra-island biosecurity landing clearance.

(5) No vessel whose master is intending to land at or anchor near all or any of Henderson, Ducie or Oeno Islands shall depart from Pitcairn Island without intra-island biosecurity clearance having been granted by a biosecurity officer.

(6) Each crew member and each intending passenger on the outgoing vessel must before boarding the vessel make to a biosecurity officer the declaration required by section 23 in respect of their clothing and baggage.

(7) Where a declaration is tendered under this section, the provisions of section 23(5) shall apply.

(8) After taking the steps in section 23(5) a biosecurity officer may –

- (a) grant intra-island biosecurity entry clearance to the passenger; or
- (b) where the biosecurity officer is satisfied that any regulated article disclosed by or found upon an intending passenger is a prohibited import, or does not comply with any prescribed biosecurity import regulations in relation to it, or poses a biosecurity risk to the island of intended destination, grant such clearance on condition that the regulated article not be taken aboard the vessel or, where appropriate, on condition that the regulated article have biosecurity measures applied to it.

(9) Where under subsection 8(b) a regulated article has been found it shall be dealt with in accordance with section 27(4).

(10) No person shall depart for or land on any or all of Henderson, Ducie or Oeno Islands without a biosecurity entry clearance granted under

section 23 or an intra-island biosecurity entry clearance granted under this section.

#### **PART IV – BIOSECURITY IMPORT PROCEDURES**

Biosecurity  
import  
clearance

25. –(1) Incoming goods that have been landed may be held in any place (a “biosecurity monitoring zone”) designated by the Chief Biosecurity Officer for biosecurity inspection pending biosecurity entry clearance or other disposition under this Ordinance.

(2) No person other than a biosecurity officer may move or handle goods held in a biosecurity monitoring zone for biosecurity inspection, except for the purpose of biosecurity measures being applied to the goods in accordance with this Ordinance, or with the permission of a biosecurity officer.

(3) In order to obtain biosecurity import clearance for any goods, the importer must, if so required by a biosecurity officer in any particular case, complete a biosecurity import declaration and submit the goods for biosecurity goods inspection.

(4) This section does not apply in respect of baggage accompanying passengers or crew members, but section 23 applies to such baggage.

(5) Shipping containers of articles presented for biosecurity entry 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.

(6) Animals presented for biosecurity entry clearance must be identified in their scientific name by genus and species.

Biosecurity  
import  
procedures

26. –(1) If a biosecurity import declaration is required under section 25(3), it must be in a form approved by the Chief Biosecurity Officer, stating –

(a) the nature of the goods and whether they include a regulated article;

(b) the country or area of origin of the goods.

(2) If the goods include a regulated article, and if a biosecurity officer so requires, the biosecurity import declaration must also attach any –

(a) biosecurity documentation issued by the country or area of origin in relation to the goods;

(b) biosecurity import permit issued under this Ordinance in relation to the goods.

(3) An importer who –

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

will be refused biosecurity import clearance for the goods.

- (4) The importer of goods must, if a biosecurity officer so requests –
  - (a) if the goods are in a container, open the container or enable the officer to do so;
  - (b) allow the officer to inspect the goods;
  - (c) allow the officer to take samples and conduct tests to enable the officer to determine whether biosecurity import clearance is required;
  - (d) if any of the goods require biosecurity measures to be applied to them, submit them to such measures.

(5) If the importer fails to comply with any of the requirements of subsection (4), a biosecurity officer may refuse to grant biosecurity entry clearance for the article or consignment and may order the article or consignment to be reconsigned or destroyed.

(6) The cost of taking goods to a biosecurity monitoring zone where they can be inspected, and of keeping them there, is to be borne by the importer, 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.

(7) If, after inspecting incoming goods, a biosecurity officer is satisfied that they –

- (a) are or include a regulated article, section 27 applies;
- (b) are not and do not include a regulated article, the goods must be granted biosecurity import clearance.

(8) If incoming goods are not inspected under subsection (4), a biosecurity officer is deemed to be satisfied that they are not and do not include a regulated article, and the goods must be granted biosecurity import clearance.

Grant and refusal of biosecurity import clearance

27. –(1) If, after inspecting incoming goods that include a regulated article a biosecurity officer is satisfied that the article –

- (a) is not and does not include a prohibited import; and
- (b) complies with any biosecurity import specifications in relation to it; and
- (c) does not pose a biosecurity risk to the Pitcairn Islands,

the officer must, subject to subsection (3), grant biosecurity import clearance.

(2) If the biosecurity risk presented by an incoming regulated article or consignment of regulated articles 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 complies with the biosecurity import specifications in relation to it.

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

- (a) quarantine is a biosecurity import specification for the article; or
- (b) during biosecurity goods inspection the article is found to be, or is suspected to be, infected, infested or contaminated.

(4) 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.

(5) Any arrangements made under subsection (4) –

- (a) are at the importer's expense; and
- (b) must be such as do not, in the opinion of a biosecurity officer, increase the biosecurity risk from the article or consignment.

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

#### **PART V – BIOSECURITY QUARANTINE**

Biosecurity  
quarantine of  
goods

28. –(1) The Chief Biosecurity Officer may in writing designate any land or premises in the Pitcairn Islands as a biosecurity quarantine station for animals, animal products, plants, plant products, conveyances, containers or other goods for the purposes of this Ordinance.

(2) A biosecurity officer may order into biosecurity quarantine any incoming regulated article if –

- (a) the article is a prohibited import and must therefore be reconsigned or destroyed;
- (b) biosecurity quarantine is specified as an 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.

(3) A biosecurity officer may order into quarantine any regulated article that in the opinion of the officer presents a biosecurity threat to the Pitcairn Islands that cannot be reduced or removed by appropriate biosecurity measures.

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

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

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

(5) If an article is quarantined under this section, the owner or custodian must, if reasonably practicable, be notified of the reasons for the quarantine and, if it was removed under subsection (4)(b), the location of the article.

Conditions of  
biosecurity  
quarantine

29. –(1) To the extent of available resources, the Chief Biosecurity Officer must ensure that the biosecurity quarantine station is provided with any buildings and facilities reasonably needed to –

(a) hold articles in biosecurity quarantine;

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

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

(2) The Chief Biosecurity Officer may issue directions as to –

(a) the period for which different types of articles must remain in biosecurity quarantine station;

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

(c) the management of the station, including, but not limited to, the security of the station, the persons who may be admitted to it, and notices to be displayed at it.

(3) No person may –

- (a) enter the biosecurity quarantine station without permission of a biosecurity officer; or
- (b) damage, interfere with or in any way reduce the effectiveness of measures taken to secure the biosecurity quarantine station, or any article in the station.

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

Release from  
and return to  
biosecurity  
quarantine

30. –(1) An article in biosecurity quarantine must not be released from quarantine until a biosecurity officer is satisfied that the article no longer presents a biosecurity threat to the Pitcairn Islands, or until the article is reconsigned or destroyed as provided by this Ordinance.

- (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) When an article is released from biosecurity quarantine, the owner or custodian of it must, unless the article is destroyed, remove the article from the biosecurity quarantine station as soon as reasonably practical.

(4) No person may release an animal or remove an article from the biosecurity quarantine station before it is released or otherwise disposed of under this Part.

- (5) A biosecurity officer may –
  - (a) examine any article that has been released from biosecurity quarantine; and
  - (b) if of the opinion that the article still presents a biosecurity threat to the Pitcairn Islands, order the article back into biosecurity quarantine.

## **PART VI – ADMINISTRATION OF THE ACT**

Biosecurity  
register and  
records

31. –(1) The Chief Biosecurity Officer 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, the biosecurity register must also include details of –

- (a) specifications for regulated articles made under section 16, including the biosecurity measures appropriate to each type of regulated article;
- (b) any written directions issued by the Chief Biosecurity Officer under this Ordinance.

(3) The Chief Biosecurity Officer must maintain appropriate records relating to the biosecurity functions of the Government, including, but not limited to –

- (a) financial and resource management records;
- (b) personnel records of biosecurity officers;
- (c) operational statistics relating to the biosecurity functions of the Government.

Status of  
biosecurity  
register and  
records

32. –(1) The biosecurity register kept pursuant to section 31, except for information reasonably withheld as being confidential or restricted, must be made available for inspection and copying by members of the public during office hours at the office of the Chief Biosecurity Officer.

(2) A copy of an entry in the biosecurity register which is certified by the Chief Biosecurity Officer to be an accurate copy may be produced in court as prima facie evidence of the entry.

(3) The biosecurity register and other records kept under section 31 may be in electronic format, provided the information is readily retrievable and is protected against unintended loss and unauthorised alteration.

(4) Entries in the biosecurity register and other records kept under section 31 must be kept for a period and in a manner consistent with any written law relating to public records.

Financial  
default

33. –(1) Fines, fees and charges payable under this Ordinance are to be paid into the Consolidated Fund and dealt with in accordance with the Constitution.

(2) 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.

Notifications

34. –(1) The Chief Biosecurity Officer may at any time issue a notice –

- (a) stating that a specified invasive non-native species or a specified pest or disease is known to exist in the Pitcairn Islands;
- (b) stating that, to the best of the Government's knowledge, a specified invasive non-native species or a specified pest or disease does not exist in the Pitcairn Islands;
- (c) specifying the classification, name or identity by which any animal, animal product, plant, plant product, pest or disease is known in the Pitcairn Islands.

## PART VII – OFFENCES AND PENALTIES

General offences

35. –(1) A person who knowingly or recklessly submits a declaration or application, or provides further information, which is materially false or misleading (including by omission), commits an offence.

Maximum penalty: A fine of \$5,000, imprisonment for 6 months, or both.

(2) A person commits an offence if the person—

- (a) wilfully obstructs a biosecurity officer in the lawful exercise of the powers set out in clauses 1, 2 and 12 of Schedule 2;
- (b) refuses or otherwise fails without reasonable excuse to comply with a lawful direction given or requirement imposed under clauses 2, 3 and 4 of Schedule 2;
- (c) refuses or fails without reasonable excuse to comply with lawful requests under subclause 6(5) of Schedule 2.

Maximum penalty: A fine of \$5,000, imprisonment for 6 months, or both.

(3) A person who refuses or otherwise fails to comply without reasonable excuse with a direction issued in accordance with section 20(2) or 21(4), commits an offence.

Maximum penalty: A fine of \$5,000, imprisonment for 6 months, or both.

Offences relating to prohibited and controlled imports

36. –(1) A person who imports, or attempts to import, an article which is a prohibited import, otherwise than in accordance with a valid biosecurity import exemption, commits an offence.

Maximum penalty: A fine of \$10,000, imprisonment for 12 months, or both.

(2) A person who imports, or attempts to import, an article which is a controlled import, otherwise than in accordance with the applicable biosecurity import control requirements, or a valid biosecurity import exemption, commits an offence.

Maximum penalty: A fine of \$5,000, imprisonment for 6 months, or both.

(3) A person who owns or is in possession of a regulated article the importation of which would, at the time the offence is committed, be prohibited in accordance with this Ordinance or regulations made under section 51, commits an offence.

Maximum penalty: A fine of \$5,000, imprisonment for 6 months, or both.

(4) A person who releases or allows to escape into the wild an animal the importation of which would, at the time the offence is committed, be prohibited in accordance with regulations referred to in section 51, commits an offence.

Maximum penalty: A fine of \$5,000, imprisonment for 6 months, or both.

(5) A person who plants or otherwise causes to grow in the wild a plant the import of which would, at the time the offence is committed, be prohibited in accordance with regulations referred to in section 51, commits an offence.

Maximum penalty: A fine of \$5,000, imprisonment for 6 months, or both.

(6) It is a defence to a charge under subsection (1) or (2) for the person to prove that the article in question was not, or was no longer, in that person's power, possession or control at the time when the relevant prohibition or biosecurity import control requirement was imposed.

(7) It is a defence to a charge under subsection (3) for the person to prove that the article in question was imported in accordance with a valid biosecurity import exemption.

(8) It is a defence to a charge under this section for the person to prove that he or she took all reasonable steps and exercised all due diligence to avoid committing the offence.

Offences in relation to arrivals

37. –(1) A master who fails to make a biosecurity arrival declaration when required to do so commits an offence and will be refused landing clearance.

Maximum Penalty: A fine of \$10,000 or imprisonment for 12 months or both.

(2) A master who fails to take all reasonable steps to ensure that the vessel and its cargo, crew and passengers conform to directions given under subsection (2) commits an offence.

Maximum Penalty: A fine of \$10,000 or imprisonment for 12 months or both.

(3) The master of every incoming vessel who fails to take all reasonable steps to –

- (a) prevent any live animal on board the vessel from landing unless permitted by an appropriately qualified biosecurity officer, and then only as directed by the officer;
- (b) ensure that no ships' stores are removed from the vessel while it is in the Pitcairn Islands, except under and in accordance with the directions of a biosecurity officer,

commits an offence.

Maximum Penalty: A fine of \$10,000 or imprisonment for 12 months, or both.

(4) The master of every incoming vessel who fails to take all reasonable steps to ensure that no –

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

is discharged from the vessel into the waters of the Pitcairn Islands commits an offence.

Maximum Penalty: A fine of \$10,000 or imprisonment for 12 months, or both.

(5) A person who discharges ballast from a vessel into the waters of the Pitcairn Islands commits an offence.

Maximum Penalty: A fine of \$5,000 or imprisonment for 6 months, or both.

(6) The obligations in subsections (2) and (3) 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;
- (c) any other written law,

in respect of discharges from a vessel into the waters of the Pitcairn Islands.

Offences relating to import inspection and quarantine

38. – A person who offends against sections 29(3)(a) or (b) or against section 30(4) commits an offence.

Maximum penalty: A fine of \$5,000, imprisonment for 6 months, or both.

Offences relating to intra-island biosecurity

39. –(1) A person commits an offence if—

(a) being the master of a vessel, they depart from Pitcairn Island with the intention of landing on Henderson, Ducie or Oeno Island without an intra-island biosecurity entry clearance having been granted under section 24(4) in respect of that vessel; or

(b) they land on Henderson, Ducie, or Oeno Island without an intra-island biosecurity landing clearance having been granted to them under section 24(8).

Maximum Penalty: A fine of \$5,000, imprisonment for 6 months, or both.

Fraudulent use of official documents

40. –(1) A person to whom a permit 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.

Maximum Penalty: A fine of \$5,000 or imprisonment for 6 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.

Maximum Penalty: A fine of \$5,000 or imprisonment for 6 months, or both.

Offences by corporate bodies

41. –(1) 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.

(2) If a corporate body commits an offence against this Ordinance, every person who is a board member or Chief Biosecurity Officer or otherwise concerned in the 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.

Forfeiture

42. –(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.

- (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 Island funds; or
  - (c) if the article poses a biosecurity threat it must be destroyed as directed by the Chief Biosecurity Officer.
- (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 controlled 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*

Infringement offences

43. –(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 Chief Biosecurity Officer 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 clause 9 of Schedule 2.

(2) The fixed penalty option is not available in respect of offences for which the maximum penalty for a person who is not a corporate body exceeds a fine of \$5,000 or imprisonment for 6 months, and such offences must be prosecuted in a court.

(3) The fixed penalty referred to in subsection (1) is –

- (a) one-twentieth of the maximum financial penalty prescribed for the offence where the person is a natural person;
- (b) one fourth of the maximum penalty for the offence where the person is a corporate body.

(4) Before imposing a fixed penalty order on a person for an offence, the Chief Biosecurity Officer must notify the person in writing of 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 Chief Biosecurity Officer to deal with it under this section and consents to the confiscation of any item (where appropriate), the Chief Biosecurity Officer 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 Chief Biosecurity Officer may prosecute that person for the offence.

(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 Chief Biosecurity Officer may 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 directed by the Chief Biosecurity Officer.

## **PART VIII – MISCELLANEOUS PROVISIONS**

Jurisdiction

44. –(1) A prosecution under this Ordinance does not preclude the bringing of a civil action for damage caused by the importation, release, sale, breeding or other activity involving an animal or plant or an animal or plant product.

(2) A prosecution may be brought in the Magistrates' Court and if it is brought before the Island Magistrate the limits to the jurisdiction of the

Island Magistrate set out in section 5(b) of the Justice Ordinance shall apply.

Abandoned  
goods

45. –(1) An article may be treated as abandoned and disposed of under this section if –

- (a) any fee or charge payable by a person under this 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 7 days, or such other time (being greater than 7 days) as is specified in the notice, 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 within 7 days or such other time (being greater than 7 days) as is specified in the notice, after the end of the quarantine period in respect of it.

(2) An article that has been abandoned may be destroyed, sold or otherwise disposed of in any manner the Chief Biosecurity Officer 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

46. –(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.

(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 Chief Biosecurity Officer;
- (b) if not agreed, determined by the Chief Biosecurity Officer in accordance with the reasonable market value of the item plus reasonable consequential loss;
- (c) paid out of the funds of the Government.

Appeals from decisions

47. –(1) A person aggrieved by a decision of a biosecurity officer under this Ordinance may within 24 hours appeal to the Chief Biosecurity Officer.

(2) A person aggrieved by a decision of the Chief Biosecurity Officer under subsection (1) may within 7 days appeal in writing to the Administrator.

(3) 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.

(4) 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.

(5) If an appeal involves a technical issue, the person hearing the appeal must obtain appropriate technical advice.

(6) An appeal against a decision of the Administrator under this section lies to the Supreme Court.

Limitation of liability

48. –(1) Neither the Governor, the Administrator, the Chief Biosecurity Officer, a biosecurity officer nor any 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 Administrator, the Chief Biosecurity Officer, 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

49. –(1) In any proceedings under this Ordinance –

(a) a document purporting to have been issued by the Administrator, the Chief Biosecurity Officer, a biosecurity officer or any 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.

(2) In any proceedings under this Ordinance –

- (a) a certificate, in a form approved by the Chief Biosecurity Officer, 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 32 governs the evidential status of the biosecurity register and records kept under this Ordinance.

(4) Documents submitted for purposes of this Ordinance must be in English or be accompanied by a certified translation into English.

Publication of instruments and decisions made under this Ordinance

50 .-(1) Regulations and legislative orders made under this Ordinance must be published –

- (a) on the Public Notice Boards;
- (b) on the Pitcairn Islands official website; and
- (c) in the Annual Revision of laws made under the Annual Revision of Laws Ordinance; and

shall come into force according to their terms as from the time of publication on the Public Notice Boards.

(2) Specifications and directions issued under this Ordinance must be –

- (a) published in the biosecurity register and at the office of the Chief Biosecurity Officer;
- (b) included in any manual of instructions given to biosecurity officers pursuant to section 10(2);
- (c) published on the Pitcairn Islands official website; and

shall come into force according to their terms as from their publication on the Pitcairn Islands official website.

(3) Unless otherwise provided, any notice or other communication required by this Ordinance to be given in writing may be given electronically by –

- (a) a person to the Chief Biosecurity Officer;
- (b) the Chief Biosecurity Officer to a person, if the person has an electronic address for receipt of such notices.

(4) The Chief Biosecurity Officer may give instructions and directions to biosecurity officers by electronic means.

(5) 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.

Regulations

51. –(1) The Governor, acting after consultation with the Island Council and the Chief Biosecurity Officer, 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), regulations made under subsection (1) may –

- (a) prescribe fees and charges for the biosecurity services provided by the Government;
- (b) prescribe where, when and how a fixed penalty is to be paid;
- (c) regulate the disposal of waste so as to minimise any biosecurity risk;
- (d) prescribe any other matter which this Ordinance requires to be prescribed or which is necessary for carrying out or giving effect to this Ordinance.

(3) The precautionary approach applies to the making of regulations under this section.

(4) Regulations made under this section may create offences for breaches of them and prescribe maximum penalties not exceeding a fine of \$5,000 for an individual or \$25,000 for a corporate body.

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## SCHEDULE 1

### DEFINED TERMS

#### *(Section 3)*

In this Ordinance, unless the context otherwise requires –

**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;
- (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, where specified or the context requires, include the whole of an island;

**article** means a single unit of any goods;

**authorised** means duly authorised by the Governor, the Administrator, the Chief Biosecurity Officer, a biosecurity officer or another public officer as required for the purposes of this Ordinance;

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

**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 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 documentation** includes a sanitary or phytosanitary certificate, a certificate of origin and documentary evidence of permission to import goods under this Ordinance;

**biosecurity entry clearance** means permission under section 23 for a crew member or passenger to land from a vessel;

**biosecurity goods inspection** means an inspection of incoming goods under section 26 for the purpose of biosecurity import clearance;

**biosecurity import clearance** of an article means permission under section 27 for the article or consignment to be imported;

**biosecurity import declaration** means a declaration by an importer of goods required pursuant to section 25;

**biosecurity import exemption** means an exemption granted under section 14.

**biosecurity import permit** means a permit for the importation of regulated articles issued under section 17;

**biosecurity import specifications** means specifications issued under section 16;

**biosecurity landing clearance** means permission under section 21 for a vessel to land crew members, passengers or goods;

**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 Chief Biosecurity Officer; and

(b) any person appointed as a biosecurity officer under section 9;

**biosecurity port quarantine** means that a vessel is subject to biosecurity quarantine measures before it can land crew members, passengers or goods;

**biosecurity quarantine** means confinement in isolation of an 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 controlled non-native species, pest or disease;

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

**biosecurity risk assessment** means the evaluation by a qualified person of biological or other scientific and economic evidence to determine whether a non-native species or a pest or disease 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 16;

**biosecurity threat** means the threat of harm being caused or adverse effects resulting to animals, plants, human beings, the environment or economic activities as a result of the introduction, establishment or spread of a prohibited or controlled non-native species, pest or disease;

**biosecurity vessel arrival declaration** means a declaration made by the master of an incoming vessel under section 18;

**biosecurity vessel inspection** means the inspection of an incoming vessel under section 19 for the purpose of biosecurity landing clearance;

**consignment** means a quantity of articles which arrive in the same vessel and are under the ownership or custody of the same person;

**container** means anything in which or by which goods are encased, covered, enclosed or packed, including any material in contact with the goods;

**conveyance** means a vessel, vehicle or other means of transporting people, goods or animals from one location to another, and includes a towed oil rig;

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

**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;

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

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

**environment** includes –

(a) the ecosystem and its constituent parts, including people and communities;

(b) all natural and physical resources;

(c) the qualities and characteristics of locations, places and areas;

**eradication** means the removal of an entire population of a non-native species or of a pest or disease within an area where re-colonisation is unlikely to occur;

**establishment**, in relation to a non-native species, or a pest or disease, 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;

**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;

**food** includes any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans;

**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 and includes a conveyance;

**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 into the Pitcairn Islands, other than as the master of a vessel in which the goods are carried, and includes the owner, agent and custodian;

**incoming vessel** means a vessel that has come into the Pitcairn Islands and intends to land crew members, passengers or goods;

**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;

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

**inspection**, in relation to an item, means an official examination of the item to determine if any non-native species or pest or disease 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 non-native species** means a non-native species that has the ability to spread, causing damage to the environment, the economy or human health;

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

**land**, as a verb, means to offload cargo, passengers or crew, and includes allowing passengers or crew to dive from a vessel into the waters of the Pitcairn Islands;

**landing** includes anchoring in the waters of Pitcairn;

**non-native species** (of plant or animal) means a species, subspecies or lower taxon, introduced outside its natural past or present distribution, and includes any part, gamete, seed, egg or propagule of such species that might survive and subsequently reproduce;

**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;

**passenger arrival biosecurity declaration** means declaration made by a passenger or crew member as required by section 23;

**pest** means any species, strain or biotype of a plant, animal, microbe or pathogenic agent, or any organism, other than a non-native species, which –

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

and includes a noxious weed;

**the Pitcairn Islands** means the islands of Pitcairn, Henderson, Ducie and Oeno and the waters of the Pitcairn Islands;

**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 approach** has the meaning set out in section 3(4);

**premises** means any immovable property, other than land;

**prohibited import** means a regulated article the importation of which is prohibited under section 12;

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

**regulated article** has the meaning given to that term in section 4;

**controlled import** means a regulated article the importation of which is permitted under section 12 subject to conditions specified under section 16;

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

**test** means an examination which goes beyond a visual inspection, to determine if a non-native species or a pest or disease is, or is likely to be, present or to identify a non-native species or a pest or disease, 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 a non-native species or a pest or disease by way of cleansing, fumigation, inoculation, disinfection, disinfestation, decontamination, or otherwise;

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

**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;

**waters of the Pitcairn Islands** means –

- (a) the territorial waters of the Pitcairn Islands; and
- (b) the Exclusive Economic Zone of the Pitcairn Islands, as defined in the Proclamation Establishing an Exclusive Economic Zone (Proclamation No 1 of 1977).

## SCHEDULE 2

(Section 11)

### ADDITIONAL POWERS OF BIOSECURITY OFFICERS

#### 1. Entry, search and seizure

(1) If a biosecurity officer reasonably suspects the presence of a prohibited or restricted non-native species, pest or disease 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 or biosecurity quarantine station, and land adjacent to 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 subclause (2), enter, and search a dwelling house.

(2) If a Magistrate is satisfied on evidence by a biosecurity officer that –

- (a) there may be in a dwelling house a regulated article that poses a biosecurity threat to the Pitcairn Islands; 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 that regulated article.

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

- (a) is an uncleared imported regulated article;
- (b) poses a biosecurity threat to the Pitcairn Islands; or
- (c) 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 subclause

(3) must, if reasonably practicable –

- (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.

(5) A biosecurity officer may, at the expense of the owner or custodian, submit to appropriate biosecurity measures any regulated article seized pursuant to this clause.

#### 2. Inspection of documents

(1) A biosecurity officer may open and inspect 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.

(2) The powers in subclause (1) must only be exercised in respect of personal letters if the officer reasonably suspects that a letter contains or relates to a biosecurity threat.

### **3. Inspection of articles**

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

(2) 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.

(3) If an importer refuses to comply with a request under subclause (1), or to facilitate action under subclause (2) –

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

(b) the cost of action under paragraph (a) is a debt owing to the Government by the importer;

(c) 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.

### **4. Detention of articles**

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

(2) If an animal or plant or animal or plant product in the Pitcairn Islands is suspected of being a prohibited or restricted non-native species, or of being infected or infested by a prohibited or restricted pest or disease, a biosecurity officer may direct the animal, plant or product to be detained in a place specified by the biosecurity officer for tests to be conducted or for treatment to be administered.

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

(a) direct the importer or owner of the article to remove it to the specified place;

(b) if necessary (because the importer or owner 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.

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

(5) The cost of removal of an article to and its detention in the specified place is to be borne by the importer or owner, 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.

## **5. Testing of articles**

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

(2) Following a test of an incoming article, the article must be either released to the importer, and biosecurity import clearance granted in respect of it, or it must be treated, reconsigned or destroyed.

(3) For the purpose of considering whether to grant intra-island biosecurity landing clearance under section 24 a biosecurity officer may test, or cause tests to be conducted on, any regulated article that would, if it were not already on Pitcairn Island, require a biosecurity import permit where such tests would be a condition for importing that article into the Pitcairn Islands.

(4) Tests conducted under this subclause may include –  
(a) the taking of samples in accordance with clause 6;  
(b) conducting a postmortem examination in accordance with clause 10.

(5) If a test conducted under this subclause without negligence or malice destroys or damages an animal or other article being tested, no compensation is payable to the importer or owner of the animal or other article.

## **6. Taking of samples**

(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,

if the taking of a sample is necessary for the grant of biosecurity import clearance for the article.

(2) 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 grant of intra-island biosecurity clearance for the article.

(3) If the person in charge of a regulated article refuses consent under subclause (1) or (2) respectively, the biosecurity officer may require the person to provide a sample, failing which biosecurity import or intra-island biosecurity clearance, as the case may be, will not be granted.

(4) A biosecurity officer may request the importer of a consignment to unpack it or break it up to facilitate sampling, at the risk and expense of the importer.

(5) A person who refuses to –  
(a) allow samples to be taken ;  
(b) provide samples; or

(c) facilitate sampling,  
when required to do so under this subclause, commits an offence under section 35(2)(c).

(6) When exercising powers under subclause (1) or (2), a biosecurity officer must, if reasonably practicable, give the importer or person seeking intra-island biosecurity clearance a written notice, identifying the quantity of the sample and the place where the sample is to be analysed.

(7) In other respects, the procedure for taking and analysing samples, recording the results and disposing of the samples is as determined by the Chief Biosecurity Officer in consultation with relevant experts, according to the type of sample.

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

(9) The importer or owner of a regulated article from which samples are taken under this subclause must be notified in writing of the findings in respect of the samples as soon as reasonably practicable.

## **7. Treatment of articles**

(1) If an incoming article is found to be or to contain a prohibited or restricted non-native species, or to be infected, infested or contaminated by a prohibited or restricted pest or disease, the article may be treated to reduce the biosecurity risk to an acceptable level, whether or not treatment is a specified requirement or a condition of an import permit.

(2) Once treatment has been administered to the satisfaction of the biosecurity officer, the article must, subject to subclause (5), be released to the importer or owner and biosecurity import clearance granted in respect of it.

(3) If an article requires treatment as a condition of an intra-island biosecurity clearance, the article must be treated at the expense of the owner before biosecurity clearance is granted in respect of it.

(4) 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 clause 4, 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.

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

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

(7) If –

(a) appropriate treatment is not available in the Pitcairn Islands;  
(b) in the opinion of a biosecurity officer, there would still be a biosecurity risk after treatment; or  
(c) the importer or owner chooses not to have the article treated,  
the article must be destroyed, subject to subclause (8).

(8) If subclause (7) applies in the case of an incoming article, and if the importer chooses, the article may be reconsigned rather than destroyed, but subject to clause 8.

(9) If, during treatment, goods are destroyed or damaged, without negligence or malice, no compensation is payable to the importer or owner of the goods.

(10) 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.

## **8. Reconsignment of articles**

(1) If an incoming regulated article which requires biosecurity documentation is not accompanied by the necessary documentation, a biosecurity officer may, after informing the importer, detain the article for reconsignment or destruction.

(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 clause applies also to any container, crate, baggage, package or mail which carries it.

(5) If reconsignment is not effected within the time specified under subclause (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 clause.

## **9. Destruction of articles**

(1) If an incoming article is found to be or contain a prohibited or restricted non-native species, or to be infected, infested or contaminated by a prohibited or restricted pest or disease, and –

- (a) appropriate treatment is not available in the Pitcairn Islands;
- (b) in the opinion of the Chief 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 if subclause 8(3)(b) applies, destroyed.

(2) The power of destruction of articles in subclause (1) is in addition to any other power of destruction in or under this Ordinance.

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

(4) Packaging of an article may be destroyed, if considered to pose a biosecurity risk, whether or not the article is destroyed.

(5) If the article to be destroyed appears to be of or above the value of \$1,000, the Chief Biosecurity Officer must obtain the written approval of the Administrator before arranging for its destruction, unless delay would increase the biosecurity risk unacceptably.

(6) The manner of destruction of articles under this clause is as approved by the Chief Biosecurity Officer and the importer or owner of the article, if known, must be invited to witness the destruction.

(7) The Chief Biosecurity Officer must, if reasonably practicable, give notice of an intention to destroy any article to the importer or owner in writing before the action is taken.

(8) No compensation is payable to the importer for destruction of an article under this clause, unless negligence or malice is proved.

#### **10. Postmortem examination of an animal**

(1) If a biosecurity officer examining an animal pursuant to this Ordinance suspects that the animal is diseased and considers a postmortem examination to be necessary to establish a diagnosis, the officer may, on the written authority of the Chief Biosecurity Officer and without the consent of the owner –

- (a) take or cause to be taken the life of the animal;
- (b) cause a postmortem 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 subclause (1), the results of the examination and of any laboratory reports resulting from the examination must be provided in writing to the Chief Biosecurity Officer and to the owner of the animal, if the owner can be identified and located.

#### **11. Quarantine seal and identification marks**

(1) A biosecurity officer may apply or cause to be applied an identification mark to any regulated article, container, premises, equipment, or conveyance.

(2) A biosecurity officer may affix a notice to any vessel held in biosecurity port quarantine, stating the conditions and duration of quarantine and other information relating to the vessel as directed by the Chief Biosecurity Officer.

(3) At any time after the arrival of a vessel in the Pitcairn Islands a biosecurity officer may place a quarantine seal or lock on any container or package of imported goods on the vessel, either for subsequent biosecurity quarantine inspection of the goods, or for the holding of goods under biosecurity quarantine while the vessel remains in the Pitcairn Islands.

(4) A biosecurity officer may place a quarantine seal or lock on any container or package of imported goods which has been discharged from any vessel or aircraft arriving in the Pitcairn Islands, either for subsequent biosecurity quarantine inspection, treatment or detention prior to release or for reconsignment of the goods as the case may be.

(5) A biosecurity officer may affix a notice on a 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 required by the Chief Biosecurity Officer.

## **12. Powers in relation to people**

- (1) If a biosecurity officer is of the opinion that any person –
- (a) seeking to enter the Pitcairn Islands;
  - (b) employed in connection with biosecurity control; or
  - (c) engaged in importing articles,

is in possession or control of an article that poses a biosecurity threat to the Pitcairn Islands or the importation of which would constitute an offence, the officer may:

- (a) detain and question the person;
- (b) cause the person and the person's baggage to be searched.

(2) A search of a person under this clause must be carried out by an officer of the same sex as the person searched.

(3) A person may be detained under this clause 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.

(4) In this clause, "person" means an individual.

### SCHEDULE 3

(Section 18(1))

#### CONTENTS OF A BIOSECURITY VESSEL ARRIVAL DECLARATION

A biosecurity vessel arrival declaration, if required, must contain:

- (a) the estimated time of arrival of the vessel;
- (b) its immediately preceding port of call or airport;
- (c) the nature and country or area of origin of its cargo;
- (d) the number of passengers and crew;
- (e) whether the cargo includes any regulated articles and if so their nature;
- (f) the presence of any live animal or live plant on the vessel;
- (g) the nature of any illness or malady affecting any live animal, plant, crew member, passenger or other individual on board the vessel;
- (h) where and how the cargo was stored before being loaded onto the vessel;
- (i) whether the vessel and its cargo has had any biosecurity inspection in another country before coming to the Pitcairn Islands, and if so what inspection;
- (j) any other matter relevant to facilitating biosecurity landing clearance of the vessel that is reasonably required by the Chief Biosecurity Officer.

*Note: when used in relation to an application under section 24 for intra-island biosecurity entry and landing clearance this form is to be adapted as necessary having regard to the relevant "arrival" being that which is intended on one or more of Henderson, Ducie or Oeno Islands.*

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## **BIOSECURITY ORDINANCE**

### ***EXPLANATORY NOTE***

This Ordinance provides for a biosecurity regime for the Pitcairn Islands. It is adapted for Pitcairn circumstances from a model ordinance supplied to British Overseas Territories. Part I sets out the purpose of the Ordinance and other preliminary matters. Part II provides for a Chief Biosecurity Officer, and other Biosecurity Officers, to be appointed by the Governor.

Part III deals with three categories of goods. First, prohibited imports, which should never be allowed into Pitcairn save when an import exemption is obtained for the article. Second, controlled imports, which may be imported only if they comply with conditions that are imposed for that class of import. Third, all other items remain subject to the need for a declaration and inspection process by biosecurity officers upon arrival. Articles will not be admitted into Pitcairn if they are a biosecurity risk.

The Ordinance applies to vessels and their masters and crew, as well as to passengers. It applies to articles being imported (see Part IV) as well as to articles in the possession of passengers and crew. The Ordinance requires arrival declarations by masters of vessels and by passengers and crew. It contains powers of enforcement for biosecurity officers, who may call upon Police constables to assist. There is also the power to order biosecurity quarantine of articles if needed (Part V).

The Chief Biosecurity Officer must maintain appropriate records and may publish certain information (Part VI).

The Ordinance contains offences (Part VII) for non-compliance which are generally within the jurisdiction of the Magistrates' Court. When coming before the Island Magistrate, the available penalties would be limited to those that are within the power of the Island Magistrate (\$5,000 fine or 100 days imprisonment). There is also a provision for "fixed penalties", which may be administratively imposed for offences. Under this provision, a person who admits an offence may agree to pay the fixed penalty as an alternative to being prosecuted.

A prosecution under the Ordinance does not preclude a civil claim against a person for damages caused by the person's importation, release, sale or breeding of an animal or plant produce that contravenes the Ordinance.

The Ordinance applies to goods brought into any of the islands that make up the Pitcairn Islands. Masters of vessels must advise the Chief Biosecurity Officer of their intention to land at or near any of those Islands. The Chief Biosecurity Officer may require a vessel to proceed first to Pitcairn Island for inspection.

The Ordinance also applies to "intra-Island" travel – that is, to travel between Pitcairn, Henderson, Ducie and Oeno Islands. A master of a vessel intending to leave Pitcairn Island for any of the other three islands, as well as intending passengers and crew, must make biosecurity declarations. The biosecurity officers have the same powers of questioning and inspection as

relate to vessels and passengers entering the Pitcairn Islands. There is an offence that may be committed by a master or a passenger for landing without having been granted appropriate clearance to do so. These provisions are in the interests of preventing the spread to other islands of biosecurity risks including those that are already present on Pitcairn Island.

### **Consistency with the Constitution**

Section 19 of the Constitution provides that everyone has the right to have the environment protected, for the benefit of present and future generations, including through laws to prevent pollution and ecological degradation.

This Ordinance is an important step in ensuring compliance with s 19, establishing a biosecurity control regime to protect each of the islands making up the Pitcairn Islands against the entry of non-native species, pests, and diseases.

In order to achieve its purpose, the Ordinance provides biosecurity officers with a broad range of powers, including powers of detention, entry, search, seizure, and inspection. Specific powers include:

- Power to require biosecurity measures to be taken, including disinfestation or disinfection of the vessel and cargo (s 18(4));
- Power to search and inspect incoming vessels (s 19);
- Power to declare a vessel to be in biosecurity port quarantine and give written directions as to the movement of the vessel, passengers, crew and cargo, and treatment and biosecurity measures to be applied to the vessel (s 20);
- Power to direct a vessel which poses a serious biosecurity threat to leave the Pitcairn Islands (s 21(4));
- Power to question passengers and crew members and inspect their baggage (s 23(5));
- Power to detain passengers and crew members for further questioning and search, and their baggage for further inspection and application of other biosecurity measures (s 23(6));
- Power to open containers, inspect imported goods, take samples, and conduct tests (s 26(4));
- Power to order incoming articles into biosecurity quarantine (s 28);
- Power to search any conveyance, premises, building etc (schedule 2, clause 1);
- Power to enter and search a dwelling house on a warrant issued by a Magistrate (schedule 2, clauses 1 and 2);
- Power to open and inspect any incoming document in order to ascertain whether the document contains or relates to a regulated article (schedule 2, clause 3);
- Power to detain incoming regulated articles for biosecurity measures to be taken and to detain animals or plants (or animal or plant products) for testing or treatment (schedule 2, clause 4);
- Power to test regulated articles (schedule 2, clause 5);
- Power to take samples (schedule 2, clause 6);
- Power to treat incoming articles (schedule 2, clause 7);
- Power to order reconsignment of articles (schedule 2, clause 8);
- Power to destroy articles (schedule 2, clause 9);
- Power to detain and question people (schedule 2, clause 12(1));
- Power to search persons seeking to enter the Pitcairn Islands, employed in connection with biosecurity control or engaged in importing articles and their baggage (schedule 2, clause 12(2))

### *Section 7 Constitution – right to liberty and security*

The powers of detention in s 23(6) and schedule 2, clause 12 of the Ordinance involve the temporary deprivation of the liberty of the subject person whilst they are being questioned, searched and (if applicable) biosecurity measures are being taken in respect of any articles found.

The powers of detention, search, and inspection in s 23(6) are confined to passengers and crew members who are seeking biosecurity entry clearance. The first step for a biosecurity officer is to review the passenger arrival declaration form. They then have a discretion as to whether to question the person (and, if necessary, a spouse or family member included on the declaration) and/or inspect their baggage before deciding whether to grant biosecurity entry clearance. It is only if the biosecurity officer is not prepared to grant biosecurity entry clearance after these steps that the power to detain the passenger or crew member for further questioning and search and to detain their baggage for further inspection and application of biosecurity measures is triggered. It is anticipated that these powers will not be routinely required. Persons may only be detained for as long as is required to question and search the person and to conduct the further inspection and application of biosecurity measures.

The powers of detention in schedule 2, clause 12 only apply to persons seeking to enter the Pitcairn Islands, employed in connection with biosecurity control or engaged in importing articles. There are reasonable restrictions on the exercise of these powers. Before a biosecurity officer may exercise the power of detention and questioning, they must be of the opinion that the person is in possession or control of an article that poses a biosecurity threat to the Pitcairn Islands. Before a biosecurity officer may exercise the power to search a person and their baggage, they must suspect that the person may have on them an article the importation of which would constitute an offence. Persons may only be detained for as long as is required to question and search, and to arrange for biosecurity measures to be taken in respect of any article found.

The Chief Biosecurity Officer also has the power to give written directions as to the movement of passengers and crew whilst their vessel is in biosecurity port quarantine (s 20(2)). Any such direction would likely involve an interference with the liberty of those persons. This power can only be exercised if a biosecurity officer reasonably suspects that the vessel poses a biosecurity threat to the Pitcairn Islands (including having on board a prohibited import or prohibited or controlled non-native species or being infected or infested with a prohibited or controlled pest or disease).

Section 7(1)(b) Constitution provides that “[n]o one shall be deprived of his or her liberty save in the following cases and in accordance with a procedure prescribed by law – (b) the lawful... detention of a person .... In order to secure the fulfilment of any obligation prescribed by law”.

I am satisfied that the detention of individuals as outlined above is authorised by s 7(1)(b). The Ordinance prescribes procedures for the detention, and the reason for the detention is to secure the fulfilment of the obligations prescribed by the Ordinance.

The powers of detention may only be exercised to achieve the biosecurity functions of the Government (s 11(2)). They are important and necessary powers to ensure that the purpose of the Ordinance in s 3(2) is fulfilled.

### *Section 11 Constitution – right to respect for private and family life*

The s 11(1) right to respect for private and family life, home and correspondence is engaged by the powers of search, seizure, and inspection.

I am satisfied that the interference with this right is authorised by s 11(2) Constitution. The powers of search, seizure, and inspection are in accordance with the law and necessary in a democratic society in the interests of the economic well-being of Pitcairn (the Ordinance specifically refers to Pitcairn's economy in outlining the biosecurity functions of the Government of Pitcairn) and for the prevention of crime (in particular the unlawful importation of prohibited or controlled imports).

The powers are not overly broad and are proportionate. They can only be exercised to achieve the biosecurity functions of the Government.

The power to inspect and search incoming vessels (s 19) is necessary to inform the biosecurity officer's decision on whether to grant biosecurity landing clearance to the vessel.

The power to inspect or further inspect baggage (s 23(5) and s 23(6)(b)) is necessary to inform the biosecurity officer's decision on whether to grant biosecurity entry clearance to the passengers and crew members.

The power to search a passenger or crew member under s 23(6)(a) is only triggered where a biosecurity officer is not prepared to grant biosecurity entry clearance after reviewing the passenger arrival declaration form, questioning the person (and, if necessary, a spouse or family member included in the declaration), and inspecting the baggage.

The power to search a person in schedule 2, clause 12 is limited to situations where a biosecurity officer suspects the person may have on them an article the importation of which would constitute an offence.

All personal searches must be carried out by officers of the same sex. This ensures that the dignity of the subject person is respected and protected, in accordance with s 4 Constitution.

The powers to search conveyances, premises, or buildings (schedule 2, clause 1), are limited to situations where a biosecurity officer reasonably suspects the presence of a prohibited or restricted non-native species, pest or disease that is not under official control.

There are special protections in place for dwelling houses, which can only be searched with the consent of the owner or if the Magistrate issues a warrant. This requires the Magistrate to be satisfied that there may be a regulated article that poses a biosecurity threat to the Pitcairn Islands in the dwelling house and that the consent of the owner/occupier for a search cannot be obtained (schedule 2, clause 1(2)).

The power to inspect documents (schedule 2, clause 2) recognises the privacy expectation in personal letters and provides that the power of inspection can only be exercised if the biosecurity officer reasonably suspects that a letter contains or relates to a biosecurity threat.

I am satisfied that the powers of search, seizure, and inspection in the Ordinance are consistent with s 11 Constitution.

## *Section 21 Constitution – protection of property*

The s 21(1) right to peaceful enjoyment of possessions is engaged by the powers of search, seizure, and inspection along with the powers to quarantine vessels, test, take samples, treat, and destroy articles.

These powers are necessary to achieve the purpose of the Ordinance, are not overly extensive and are subject to appropriate restrictions. As with all powers, they can only be exercised to achieve the biosecurity functions of the Government.

The appropriate restrictions and necessity for the search, seizure, and inspection powers has been dealt with under s 11.

The power to quarantine vessels can only be exercised if a biosecurity officer reasonably suspects that the vessel poses a biosecurity threat to the Pitcairn Islands (including having on board a prohibited import or prohibited or controlled non-native species or being infected or infested with a prohibited or controlled pest or disease).

The power to test incoming regulated articles may only be exercised in order to ascertain whether the article meets the biosecurity import requirements in respect of it (schedule 2, clause 5).

The power to take samples may only be exercised if the taking of a sample is necessary for the grant of biosecurity import clearance or intra-Island biosecurity clearance (schedule 2, clause 6).

Treatment will be undertaken where an incoming article is found to be or contain a prohibited or restricted species, or to be infected, infested, or contaminated by a prohibited or restricted pest or disease (schedule 2, clause 7).

The power of destruction can be exercised if:

- The importer fails to comply with biosecurity requirements (eg open container, allow biosecurity officer to inspect goods, take samples, conduct tests, submit goods to biosecurity measures): s 26(4);
- Biosecurity import clearance is refused and the importer fails to make arrangements for reconsignment within a reasonable time: s 27(4);
- The article has been abandoned: s 45(2);
- The owner opts to have the article destroyed instead of treated: schedule 2, clause 7(5);
- The owner fails to have the article treated within a reasonable time: schedule 2, clause 7(6);
- Appropriate treatment is not available in the Pitcairn Islands or there would still be a biosecurity risk after treatment or the importer/owner chooses not to have the article treated: schedule 2, clause 7(7) & clause 9(1);
- Reconsignment of a prohibited good is not effected within a reasonable time or is not acceptable: schedule 2, clause 8(5).

There is a requirement that the Chief Biosecurity Officer obtain the written approval of the Administrator before arranging for the destruction of articles that appear to be of or above the value of \$1,000 (schedule 2, clause 9(5)).

Where articles are destroyed, no compensation is payable unless negligence or malice is proved: s 21(5), s 26(6), s 29(4), s 46(1), schedule 2, clause 4(5), clause 5(5), clause 6(8), clause 7(9), clause 9(8).

The destruction of articles clearly involves the deprivation of a person's possessions. Section 21(1) of the Constitution provides that no one shall be deprived of his or her possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

I am satisfied that destruction of biosecurity risk articles under the conditions set out in the Ordinance is in the public interest. The no compensation provisions raise an issue as to whether the deprivation is consistent with general principles of international law.

However, s 21(2) Constitution affirms the right of the Government of Pitcairn to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. Hence whilst the Ordinance does contemplate some interference with peaceable enjoyment of possessions and, in some circumstances, the deprivation of possessions, this is necessary to protect the general interest in preserving the biosecurity of the Pitcairn Islands.

### *Conclusion*

In summary, the Ordinance does contain provisions which interfere with the right to liberty, the right to privacy and protection of property. However, I am satisfied that it is consistent with Pitcairn's Constitution and can be passed.

For completeness, I also note that the powers afforded to biosecurity officers in the Ordinance are broadly similar to those in the equivalent United Kingdom legislation (refer Part 5 Invasive Alien Species (Enforcement and Permitting) Order 2019) and New Zealand legislation (refer Part 6 Biosecurity Act 1993).

Simon Mount KC

Attorney-General

29 January 2024