



Jersey

# **PLANT HEALTH (JERSEY) LAW 2003**

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Jersey

## PLANT HEALTH (JERSEY) LAW 2003

### Arrangement

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Jersey

## PLANT HEALTH (JERSEY) LAW 2003<sup>1</sup>

A **LAW** to control the spread of pests and diseases of plants and trees.

Commencement [[see endnotes](#)]

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### 1 Interpretation

In this Law, unless the context otherwise requires –

“crop” includes any crop that is the subject of agriculture, arboriculture, forestry or horticulture, whether or not grown for reward, and includes trees, shrubs and bushes, seeds and plants, and any part of those things;

“customs officer” has the same meaning as in the Customs and Excise (Jersey) Law 1999<sup>2</sup>;

“inspector” means any person authorized by the Minister in writing to be an inspector for the purposes of this Law;

“Minister” means the Minister for Planning and Environment;

“Order” means Order made under this Law;

“plant” includes any flora (including trees and other plants) and any part of any flora, whether the part is living or dead and whether or not the part has been processed in any way;

“plant pest” means pests of, and harmful organisms liable to infect, plants, whether those pests or organisms are from the animal or plant kingdom, or are viruses, mycoplasmas or other pathogens, and whether or not they have been genetically modified;

“premises” includes an aircraft, vehicle and vessel;

“sell” includes sell, offer for sale, advertise for sale, give, distribute and transfer, whether for reward or not;

“significant thing” means anything that is potentially harmful to plants, including anything animate or inanimate that may harbour or spread any plant pest;

“thing” includes any living thing.

**2 Object of this Law**

The object of this Law is the prevention and control of the development and spread of plant pests within Jersey and their spread to and from Jersey.

**3 Duties of Minister**

- (1) The Minister is responsible generally for the implementation of this Law and any Order made under this Law.
- (2) The Minister shall carry out surveys of Jersey in furtherance of the object of this Law.
- (3) Paragraph (2) does not limit the generality of paragraph (1).

**4 Orders generally**

- (1) The Minister may by Order make provision for the purpose of carrying this Law into effect and, in particular, but without prejudice to the generality of the foregoing, for prescribing any matter that may be prescribed under this Law by Order.
- (2) An Order may –
  - (a) make different provision in relation to different cases or circumstances;
  - (b) make provision by reference to, and may incorporate (by reference, annexation or otherwise), any Community provision to such extent and subject to such exceptions, adaptations and modifications as may be specified in the Order; and
  - (c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the Order.
- (3) In paragraph (2)(b), “Community provision” has the same meaning as it has in the European Communities Legislation (Implementation) (Jersey) Law 1996<sup>3</sup> and the reference in that sub-paragraph to such a provision is a reference to such a provision only to the extent that the provision relates to any matter on which an Order may be made under the provisions of this Law other than that sub-paragraph.
- (4) The Subordinate Legislation (Jersey) Law 1960<sup>4</sup> shall apply to Orders.

**5 Subject matter of Orders in detail**

- (1) The Minister may make Orders regulating or prohibiting for the purposes of this Law –
  - (a) the import, export, movement, sale and keeping of plants, and of plant pests and other significant things;
  - (b) the doing of anything to or with plant pests and other significant things, including treating or modifying them, experimenting with them or doing anything else to or with them; or

- (c) the sowing, planting, cultivation, destruction, or disposal, of plants or crops.
- (2) An Order may, for the purposes of this Law, authorize or require the taking of action, or the giving of orders to take action, to reduce or avoid the dangers posed by plant pests and other significant things.
- (3) However, such action does not include the entering of premises.
- (4) An Order may authorize or require an inspector or any other person to do any of the following things, or may authorize an inspector to require any person to do any of the following things, for the purposes of this Law –
  - (a) to treat, remove, return, place in quarantine or destroy, take to a specified place, or otherwise dispose of any plant, crop, plant pest or other significant thing;
  - (b) to open, treat or place in quarantine any container or premises; or
  - (c) to implement, or act in accordance with, a programme for the reduction or elimination of the presence or effects of, or for the reduction or elimination of the risk of the presence or effects of, a plant pest on plants, crops, land or premises.
- (5) An Order may authorize an inspector to act as follows for the purposes of this Law –
  - (a) to require a person to do something, or not to do something, in relation to the import, export or movement of plants, and of plant pests and other significant things;
  - (b) to inspect, examine, mark or photograph any premises, plant, crop or other thing;
  - (c) to require a person to produce any document, record, plant or other thing at a specified time and at a specified place;
  - (d) to require a person to answer any question or provide any information, but not so as to incriminate himself or herself; or
  - (e) to take samples for analysis or other purposes, examine anything and take copies.
- (6) An Order may, for the purposes of this Law –
  - (a) prescribe fees payable for any authorization, licence, certificate, plant passport, approval or registration, or any inspection or other service, provided under this Law or an Order, including fees in respect of anything done by an inspector or another person, whether or not it is done at the request of the person required to pay the fee, and may make provision for the recovery of such fees or the refusal of any service if a fee prescribed for the service is not paid;
  - (b) make provision for the seizure, retention or forfeiture of any plant, crop, plant pest or other thing in respect of which an offence has been committed under this Law or an Order;
  - (c) require the giving of notice of any act, activity, event or occurrence;
  - (d) require records to be kept and to be available for inspection;

- (e) make provision with respect to certificates and other documents and with respect to registration and appeals;
  - (f) make provision with respect to the issue of licences or authorities to do what otherwise would be a breach of this Law or an Order;
  - (g) prescribe the manner of service of any notice, requirement or other document for the purposes of this Law or an Order;
  - (h) require anything to be done only with specified approval or only if certain conditions are met;
  - (i) leave anything to be determined, specified, required, approved or authorized, or otherwise done, by an inspector or another person; or
  - (j) provide that a person who is guilty of an offence against any of its provisions shall be liable on conviction to imprisonment for 3 months and to a fine of level 4 on the standard scale.
- (7) Paragraphs (4) to (6) do not limit the generality of paragraphs (1) and (2).

## **6 Compensation**

- (1) If a crop is destroyed, or its value reduced, by anything done in pursuance of this Law or an Order or a requirement given under this Law or an Order, the Minister may pay compensation to the owner of the crop.<sup>5</sup>
- (2) The compensation shall not exceed the reduction in value of the crop or (in the case of the destruction of a crop) the value of the crop.
- (3) For the purposes of this Article, the value of a crop shall be taken to be the value that could reasonably have been expected, from the viewpoint of the time of the reduction in value or destruction, to be obtained had the crop later been harvested, and sold on the open market, in the normal course of events.

## **7 False statements**

- (1) A person shall not knowingly or recklessly make any statement, or provide any information, that is false or misleading in a material particular –
  - (a) in any claim, application, plant passport, certificate, or other document under this Law or an Order;
  - (b) in connection with the grant of a licence, or with any registration or authorization, or with the issue of any document, under this Law or an Order; or
  - (c) in providing any information under this Law or an Order.
- (2) A person shall not re-use a plant passport or certificate, or alter a plant passport, certificate, licence or other document issued or used under this Law or an Order, or make or issue such a thing that appears to be so issued or used, without lawful authority so to do.
- (3) A person who contravenes this Article shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.



**8 Entry and search of premises**

- (1) If, on application made by an inspector or a police officer supported by information on oath, the Bailiff, a Jurat or a magistrate is satisfied on reasonable grounds of one or more of the following matters, he or she may issue a warrant authorizing any inspector, or any police officer, to enter any premises specified in the warrant within 28 days after the issue of the warrant –
  - (a) that an offence under this Law or an Order has been, or is being, committed and that there is evidence of the commission of the offence to be found on the premises;
  - (b) that a person has failed to comply with the requirements of a notice (including a direction, requirement, order or other instrument) under an Order, being a notice that has been served on the person and requires something to be done, or not to be done, on the premises;
  - (c) that there is evidence of any plant pest, or other significant thing, on the premises (whether or not any offence has been committed in relation to that pest or thing);
  - (d) that, in order to carry out any survey of Jersey, or any inspection of premises, in furtherance of the object of this Law, it is necessary to enter premises;
  - (e) that entry of the premises would be in furtherance of any purpose prescribed by Order as a purpose necessitating entry of premises, or giving a basis for power to enter premises;
  - (f) that entry of the premises would be in circumstances prescribed by Order as circumstances necessitating entry of premises, or giving a basis for power to enter premises.
- (2) An inspector or police officer who enters premises by authority of such a warrant –
  - (a) may, if so authorized by the warrant, use such force as is reasonably necessary to make that entry;
  - (b) may inspect, search, survey and test the premises or anything found on the premises, remove anything found on the premises, move any soil, or water, within the premises or move, take apart or remove any structure within the premises;
  - (c) may test anything so removed and retain anything so removed that may be required in evidence in any civil or criminal proceedings;
  - (d) may do on those premises anything that he or she is authorized to do by this Law or an Order;
  - (e) may take with him or her such other persons as may be necessary, including, but not limited to, representatives of the European Commission;
  - (f) may take with him or her such equipment and vehicles as are necessary for the purpose of facilitating the exercise of his or her powers under this Law or under an Order;

- (g) may require a person on the premises, at the time when the inspector or police officer is there, to provide such assistance as the inspector or police officer reasonably requires;
  - (h) may do such other thing as is prescribed by Order;
  - (i) shall, if the premises are residential premises, serve not less than 48 hours' written notice of the proposed entry on the occupier of the premises (unless the warrant permits entry to be made without the giving of such notice or to give such notice could reasonably be expected to defeat the purpose of the entry or to cause unreasonable delay);
  - (j) shall, if any person on the premises so requires, show proof of his or her authority as such an inspector or police officer and show the warrant authorizing the entry; and
  - (k) on leaving any unoccupied premises so entered, shall leave them as effectively secured against trespassers as he or she found them.
- (3) The power of entry under a warrant under this Article may only be exercised in a manner that is proportionate and otherwise reasonable.
  - (4) The power of entry under a warrant under this Article may be exercised at any time of day specified in the warrant or (if the warrant so provides) at any time of day.
  - (5) An inspector who seizes anything in the exercise of a power conferred by this Article or by an Order shall, if so requested by a person showing himself or herself to be the occupier of premises on which it was seized or to have had custody or control of it immediately before the seizure, provide that person with a record of what he or she seized.
  - (6) The inspector shall provide the record within a reasonable time from the making of the request for it.

## **9 Co-operation of customs officers**

- (1) An inspector may request a customs officer (either orally or in writing) to prohibit by notice the removal of any plant, plant pest or other thing from customs control until it has been examined by an inspector and such request may identify the plant, plant pest or other thing in any way.
- (2) A request made orally under this Article shall be confirmed in writing.
- (3) Where a request has been made under paragraph (1), the customs officer shall, by notice in writing served on a person having the plant, plant pest or other thing in the person's possession or under the person's control, require that, until the plant, plant pest or other thing has been examined by an inspector, it shall not be removed from the place specified in the notice.
- (4) An inspector shall, without undue delay, examine any plant, plant pest or other thing in respect of which a notice has been served by a customs officer under this Article and shall advise that officer in writing of the terms of any notice issued by the inspector, and of any other action taken by the inspector, in accordance with this Law or an Order.

- (5) If a customs officer has served a notice under this Article prohibiting removal of any plant, plant pest or other thing, a person shall not remove anything to which the notice relates except with the written authority of a customs officer or an inspector.
- (6) A person who contravenes paragraph (5) shall be guilty of an offence and liable to a fine of level 4 on the standard scale.

#### **10 Law does not affect Customs and Excise (Jersey) Law 1999**

Nothing in this Law or an Order affects the operation of the Customs and Excise (Jersey) Law 1999<sup>6</sup>.

#### **11 Obstruction of officers**

Any person who obstructs an inspector, a customs officer or a police officer in the exercise of his powers under this Law, or an inspector or a customs officer in the exercise of his powers under an Order, shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

#### **12 Limitation of civil liability**

- (1) A person or body to whom this Article applies shall not be liable in damages for anything done or omitted in the discharge or purported discharge of any functions under this Law or an Order unless it is shown that the act or omission was in bad faith.
- (2) This Article applies to –
  - (a) the States; and
  - (b) the Minister, an inspector, customs officer or police officer, or any person who is, or is acting as, an officer, employee or agent in an administration of the States for which the Minister is assigned responsibility, or who is performing any duty or exercising any power on behalf of the Minister.

#### **13 General provisions as to offences**

- (1) Where an offence under this Law (or an Order) committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.
- (3) Any person who aids, abets, counsels or procures the commission of an offence under this Law (or an Order) shall also be guilty of an offence and liable in the same manner as a principal offender to the penalty provided for that offence.

#### **14 Appeals**

- (1) There shall be a right of appeal to the Royal Court against –
  - (a) a refusal, suspension or cancellation of any authority, registration or licence under an Order;
  - (b) a requirement under an Order; or
  - (c) any other act under this Law or an Order, being an act prescribed by Order for the purposes of this Article.
- (2) An appeal shall be brought within 21 days after the appellant is served with a written copy of the decision, requirement, or other act, against which the appeal is brought, or within any further time that the Royal Court may allow.
- (3) Unless the Royal Court so orders, the lodging of an appeal shall not operate to stay the effect of a decision, requirement or other act pending the determination of the appeal.
- (4) On hearing the appeal, the Royal Court may –
  - (a) confirm, reverse or vary the decision, requirement, or other act, against which the appeal is brought; and
  - (b) make any order as to the costs of the appeal as it thinks fit.

#### **15 Saving**

Anything that was done under the Destructive Insects and Pests (Jersey) Law 1960<sup>7</sup> and could have been done under this Law shall be taken to have been done under this Law and to continue to have effect (if at all) under this Law for as long as it would have had effect had the Destructive Insects and Pests (Jersey) Law 1960 not been repealed.

#### **16 Citation**

This Law may be cited as the Plant Health (Jersey) Law 2003.

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Plant Health (Jersey) Law 2003	L.30/2003	26 July 2005 (R&O.73/2005)
Transfer of Functions (Environment and Public Services Committee (No. 2) (Jersey) Act 2004	R&O.133/2004	23 November 2004
Public Finances (Consequential Amendments) (Jersey) Regulations 2005	R&O.126/2005	9 December 2005
States of Jersey (Amendments and Construction Provisions No. 3) (Jersey) Regulations 2005	R&O.132/2005	9 December 2005

### Table of Renumbered Provisions

Original	Current
1(1)	1
1(2) to (4)	Otiose, omitted
16	Spent, omitted
17(1)	16
17(2)	Spent, omitted

### Table of Endnote References

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- <sup>1</sup> This Law has been amended by the States of Jersey (Amendments and Construction Provisions No. 3) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government
- <sup>2</sup> Chapter 24.660
- <sup>3</sup> chapter 17.245
- <sup>4</sup> chapter 15.720
- <sup>5</sup> Article 6(1) amended by R&O.126/2005
- <sup>6</sup> chapter 24.660
- <sup>7</sup> chapter 01.640 (revised ed. 31 August 2004)