

CHAPTER 115 EXPLOSIVES ACT

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AN ACT

to make provision for regulating control over the manufacture, use, possession, storage, importation, exportation, transportation and destruction of explosives; and to provide for matters incidental thereto or connected therewith.

[7th May, 1974]

Act 10 of 1974,

Act 13 of 1994,

Act 14 of 1995.

1. Short title

This Act may be cited as the Explosives Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Deputy Chief Inspector**” means the Deputy Chief Inspector of Explosives appointed under sub-section (2) of section 4;

“**authorised explosive**” means any such explosive as the Minister may, by statutory instrument, specify from time to time;

“**authorised official**” means any person not below the rank of superintendent authorised in writing by name or office by the Chief Inspector to impose a summary fine as may be prescribed in any regulations made under this Act;

“**authorising officer**” means a police officer appointed under sub-section (2) of section 12;

“**Chief Inspector**” means the Chief Inspector of Explosives appointed under sub-section (1) of section 4;

“**explosives**” means—

(a) gunpowder, nitro-glycerine, dynamite, gelignite, gun-cotton, blasting-powder, explosives, fulminate of mercury or of any other metal, and every other substance, whether similar to those herein mentioned or not, which is used or manufactured with a view to producing a practical effect by blasting or explosion;

(b) any detonating, igniter or safety fuse, electric or non-electric, detonator, percussion cap, fuse igniter, and every adaptation or preparation of any explosive herein defined;

(c) any other substance which the Minister may from time to time, by statutory instrument, declare to be an explosive;

but shall not include any ammunition, firework or rocket for which a license to import, possess or deal in is required by any other law;

“explosives factory” means any place licensed under this Act for manufacturing explosives for sale, and includes a mound, building and magazine, and the work carried on therein or thereon for whatsoever purpose;

“holder” means any person appointed by the owner to obtain authority to possess, manufacture, store, transport, deal in, import or export explosives;

“Inspector of Explosives” means an Inspector of Explosives appointed under sub-section (3) of section 4, and shall include the Chief Inspector of Explosives, the Deputy Chief Inspector of Explosives and a Senior Inspector of Explosives;

“Inspector of Mines” means an Inspector of Mines appointed under sub-section (3) of section 4 and shall include the Chief Inspector of Mines, the Deputy Chief Inspector of Mines and a Senior Inspector of Mines;

“Inspector of Machinery” means an Inspector of Machinery appointed under sub-section (3) of section 4, and shall include the Chief Inspector of Explosives, the Deputy Chief Inspector of Explosives and a Senior Inspector of Machinery;

“manager” means the person appointed to be or purporting to act as the manager or any person in charge of any mine, explosives factory or works;

“manufacture” includes the making and division of any explosive from or into its component parts by any process, the conversion of an explosive into an explosive of another kind, and the alteration, fitting for use or repair of any explosive;

“mine” has the meaning assigned to the word “mine” when used as a noun in the Mines and Minerals Act;

“owner” includes the occupier of any premises where explosives are manufactured, used, stored or handled; and where such occupier is a body corporate, the accredited representative of such body;

“premises” includes land, road, rail, harbour, river, lake, rail truck, canal, building, structure, ship, boat or any other means of conveyance or transport;

“works” means any place other than a mine or explosives factory where explosives are manufactured, used, stored, transported or handled.

[S 2 am by Act 14 of 1995.]

3. Application

Nothing in this Act shall apply to—

(a) the manufacture, storage, use, possession, transportation, importation and exportation of explosives by the Zambia Defence Force, the Zambia Police Force and the Zambia Prison Service or any other person authorised under any written law;

(b) any ammunition for which a license is required in accordance with the provisions of the Firearms Act;

(c) any fireworks for which any license is or may be required under any written law.

4. Appointments

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(1) There shall be appointed a Chief Inspector of Explosives who shall be a public officer, and for the purposes of this Act, the Chief Inspector of Mines shall be the Chief Inspector of Explosives, and shall, subject to the general or special directions of the Minister, exercise and perform the functions conferred or imposed upon the Chief Inspector of Explosives by or under this Act, and shall have overall responsibility for matters concerning safety in the manufacture, possession, use, storage, transportation, importation, exportation and destruction of explosives in the Republic.

(2) There shall be appointed a Deputy Chief Inspector of Explosives who shall be a public officer and, for the purposes of this Act, the Deputy Chief Inspector of Mines shall be the Deputy Chief Inspector of Explosives, and shall exercise and perform the functions conferred or imposed upon the Assistant Chief Inspector of Explosives by or under this Act and such other functions as are delegated to him by the Chief Inspector.

(3) There shall be appointed such number of Inspectors of Explosives, Inspectors of Mines and Inspectors of Machinery, who shall be public officers, and such number of other public officers as may be necessary for the due and proper administration of this Act.

(4) Where the office of the Chief Inspector is vacant or the Chief Inspector is, owing to absence or inability to act from illness or other cause, unable to exercise and perform the functions of his office, the Deputy Chief Inspector shall exercise and perform the functions of the Chief Inspector during such vacancy, absence or inability.

(5) The Chief Inspector, the Deputy Chief Inspector, an Inspector of Explosives, an Inspector of Mines, an Inspector of Machinery or any other public officer appointed under this Act shall not be liable for anything done or omitted to be done in good faith in the performance or purported performance of any function vested in or delegated to him by or under this Act.

(6) An Inspector of Explosives appointed under sub-section (3) may, if suitably qualified, be appointed an Inspector of Mines, and if so appointed, he shall, for the purposes of this Act, have all the powers conferred by or duties imposed upon an Inspector of Mines by or under this Act.

[S 4 am by Act 14 of 1995.]

5. Powers of Inspectors of Explosives, Mines and machinery

(1) —

(a) An Inspector of Explosives shall have the power to enter, inspect, examine or conduct an inquiry or test at any hour of the day or night in the whole or any part of an explosives factory, explosives magazine and any place on the surface where explosives are manufactured, transported, handled or stored, for the purpose of determining whether the provisions of this Act and any regulations made there under are complied with, and he may issue such directions as he may deem necessary to ensure compliance therewith, or to be necessary or desirable in the interests of safety and health.

(b) An Inspector of Mines shall have the power to enter, inspect, examine or conduct an inquiry or test at any hour of the day or night at any place in the Republic where explosives are used, manufactured, transported, handled or stored, for the purpose of determining whether the provisions of this Act and any regulations made there under are complied with, and he may issue such directions as he may deem necessary to ensure compliance therewith, or to be necessary or desirable in the interests of safety and health.

(c) An Inspector of Machinery shall have the power to enter, inspect, examine or conduct an inquiry or test at any hour of the day or night at any place where any machinery or apparatus is used for or is associated with the manufacture of explosives, for the purpose of determining whether the provisions of this Act and any regulations made there under are complied with, and he may issue such directions as he may deem necessary to ensure compliance therewith, or to be necessary or desirable in the interests of safety and health.

(2) In exercise of the respective powers contained in paragraphs (a), (b) and (c) of sub-section (1), the Inspector of Explosives, Inspector of Mines and Inspector of Machinery shall also have power—

(a) to take or remove for the purpose of analysis or test or for use as evidence, samples of any minerals, material or other substance as he may deem necessary:

Provided that where such power is exercised the holder or manager shall be notified of anything so taken or removed;

(b) to obtain and record statements from witnesses, to appear at or conduct inquiries held regarding accidents, dangerous occurrences and contraventions of any of the provisions of this Act or any regulations made there under, to appear at inquests and to call and examine and cross-examine witnesses and to conduct or assist in conducting a prosecution for any offence under this Act or any regulations made there under subject, however, to any general or special directions of the Director of Public Prosecutions;

(c) to take evidence on oath or affirmation, and to administer oaths or affirmations for such purpose, when conducting an inquiry under the provisions of this section;

(d) to require any person to attend as a witness, to give evidence or to produce any document in his possession or power which relates to any matter connected with an inquiry under the provisions of this section:

Provided that no person shall be compelled to answer any question, or produce any book, record, document or thing which he could not be compelled to answer or produce if he were an accused person or a witness, as the case may be, in criminal proceedings in a court;

(e) to draw the attention of any holder or manager to any practice not specifically dealt with by or under this Act which appears to be of a dangerous or defective character, and he may issue such orders with regard to the cessation or modification of such practice as he may deem fit and the holder or manager shall forthwith comply therewith; and such orders shall, as soon as practicable thereafter, be confirmed in writing:

Provided that where any direction or order has been issued under this section, it shall be competent for the holder or manager to submit in writing such objections as he may have to the direction or order to the Chief Inspector who may confirm, modify or withdraw the direction or order.

(3) An Inspector of Explosives and an Inspector of Mines shall also have the power to issue, refuse, suspend or cancel any license, authorisation, sanction or permit for which provision is made by or under this Act, and to give notice thereof to the party affected by such refusal, suspension or cancellation.

6. Appeal against suspension, refusal or cancellation

(1) Any person aggrieved by any refusal, suspension or cancellation made under sub-section (3) of section 5 (other than a refusal, suspension or cancellation by the Chief Inspector under that sub-section) may appeal in writing, within fourteen days of receiving notice of such refusal, suspension or cancellation, to the Chief Inspector who shall, after considering any written or oral representations which such person may wish to make in that behalf, give his decision thereon.

(2) Any person aggrieved by any refusal, suspension or cancellation made by the Chief Inspector under sub-section (3) of section 5, or by his decision under sub-section (1), may appeal within fourteen days, in such manner as may be prescribed, to the Minister whose decision, after considering any written or oral representations which such person may wish to make in that behalf, shall be final and shall not be questioned in any court:

Provided that no appeal shall be against the result of any test or examination which any person may be required to undergo in terms of any regulations made under this Act in order to obtain any license, authorisation, sanction or permit.

7. Importation and exportation of explosives

(1) No person shall import into or export from or cause to be imported into or exported from the Republic any explosives without the written authority of the Chief Inspector.

(2) Any person who contravenes the provisions of sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

[S 7 am by Act 13 of 1994.]

8. Manufacture of explosives

(1) No person shall manufacture any explosives except in accordance with any regulations made under this Act and the terms and conditions of a license issued to him for the purpose:

Provided that where any person is desirous of making explosives for experimental or trial purposes he shall, before making such explosives, obtain written approval from the Chief Inspector.

(2) Any person contravening the provisions of sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment not exceeding five years or to both, and the explosives in respect of which the contravention has taken place shall be seized by the Chief Inspector and thereafter destroyed.

[S 8 am by Act 13 of 1994; 14 of 1995.]

9. Special rules for explosives factories

(1) The manager of an explosives factory shall make special rules not inconsistent with this Act or any regulations made there under for controlling the processes and procedures and for the maintenance of order and discipline and the prevention of accidents at the explosives factory, and such rules shall be approved by the Minister prior to their enforcement.

(2) If the Minister considers any such rule to be unreasonable, unnecessary or otherwise undesirable, he shall disallow it or require it to be altered and his decision thereon shall be final.

(3) Special rules approved by the Minister shall have the same force and effect as any regulations made under this Act.

(4) It shall be the duty of the manager to ensure that every person in the explosives factory for whose guidance or safety the special rules are made or who may be affected thereby is supplied with a copy of such rules, and that such person has duly acknowledged receipt thereof.

10. Powers of search in explosives factories

(1) In every explosives factory, the explosives manufacturing and storage areas and so much of the land surrounding them as may be shown on the official site plan and as the Chief Inspector may direct shall be fenced, and such areas shall be known as danger areas.

(2) For the purpose of ensuring that a person entering or about to enter any danger area does not possess any smoking or combustible material or any article designed or adapted to produce a naked flame or spark or any other article which may be dangerous to persons or property in such area, it shall be the duty of the manager of an explosives factory to employ a sufficient number of persons competent to carry out a search of the person so entering or about to enter the danger area.

(3) The search shall be carried out in the presence of at least one other person employed under sub-section (2), and in so doing the person making the search shall look for any smoking or combustible material or any article designed or adapted to produce a naked flame or spark or any other article or thing which may be dangerous to persons or property in any danger area.

(4) Any person who willfully obstructs, resists or refuses to be searched by a person duly authorised to carry out a search in exercise of any power conferred upon such person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty five thousand penalty units or to a term not exceeding two years and six months or to both.

[S 10 am by Act 13 of 1994; 14 of 1995.]

11. Powers of search for explosives unlawfully possessed

(1) For the purpose of this section, "officer" means a police officer of or above the rank of Assistant Inspector, Grade I, an Inspector of Explosives or an Inspector of Mines.

(2) An officer may, without warrant, stop, search and detain any vehicle in or upon which there is reason to suspect that explosives are being unlawfully conveyed and may also stop, search or cause to be searched and detain any person who may reasonably be suspected of unlawfully conveying explosives.

(3) An officer may, without warrant, enter, with or without assistance, and using force for that purpose if necessary, any place or premises in which he has reason to suspect that any explosive is being unlawfully manufactured or kept, and may search or cause to be searched such place or premises and any person found therein.

(4) Where, as a result of any search made under the provisions of this section, any explosive is found and no valid permit, license, authorisation or sanction is produced by any person in respect thereof, the officer concerned may seize such explosive, and he shall thereupon dispose of it in such manner as the Chief Inspector may direct.

(5) Any person who willfully obstructs or resists any officer in the lawful exercise of any power conferred upon, or in the lawful execution of any duty imposed upon, such officer by this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty five thousand penalty units or to imprisonment not exceeding two and a half years or to both.

[S 11 am by Act 13 of 1994; 14 of 1995.]

12. Authorisation of and entry to and search of premises where explosives are stored or used

(1) For the purpose of this section, “building or other premises” shall not include any building or premises used as a dwelling-house or as a recreation hall, theatre or other similar place of entertainment.

(2) The Inspector-General of Police may, by *Gazette* notice, appoint by name or office any police officer of or above the rank of Assistant Inspector, Grade I, to be an authorising officer for the purposes of this section in respect of such area as the Inspector-General may, by the same or by any other *Gazette* notice, define.

(3) An authorising officer appointed under sub-section (2) may issue a written authorisation, subject to such conditions, if any, as he may in his discretion endorse thereon, to such person or persons as he may in his absolute discretion deem fit to search for explosives.

(4) Any person authorised under the provisions of sub-section (3) may, subject to the conditions of his authorisation, enter any building or other premises where he has reason to believe that explosives are stored or used and to search or cause to be searched any person or property found in such building or premises.

(5) Without prejudice to the generality of the provisions of sub-section (4), the conditions which may be endorsed upon any authorisation issued there under may relate to any or all of the following matters—

- (a) the date upon which or the dates between which entry and search may be made;
- (b) the hours between which entry and search may be made;
- (c) the particular building or other premises concerned.

(6) Any person entering or conducting a search in any building or other premises under the provisions of this section shall produce his written authorisation to any person in or about such building or premises, who may wish to confirm the authority of such person.

(7) Any person who willfully obstructs or resists any authorised person in the lawful exercise of any of the powers conferred by the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty five thousand penalty units or to imprisonment for a term not exceeding two and a half years or to both.

[S 12 am by Act 13 of 1994; 14 of 1995.]

13. Precautions against loss of explosives

(1) Every person having in his possession or under his control any explosive shall take all precautions which, having regard to the purpose for which such explosive is lawfully used, are reasonable, to ensure that such explosive is not lost or stolen or is not at any time available to any person not lawfully entitled to possess or use such explosive.

(2) Any person who—

(a) fails to comply with any of the provisions of sub-section (1); or

(b) is or was in possession of any explosive and refuses or fails on demand made by the officer referred to in sub-section (1) of section 11 or by any authorised person to give a true account of the location or disposal of such explosive or to produce any relevant license, authorisation, sanction or permit issued to him;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty five thousand penalty units or to imprisonment for a term not exceeding two and a half years or to both.

(3) In any prosecution for an offence under sub-section (2), the onus shall lie on the accused to prove that he took all reasonable precautions required to be taken under sub-section (1).

[S 13 am by Act 13 of 1994; 14 of 1995.]

14. No taking away of explosives without permission

(1) No person shall without the permission of the holder take away or cause to be taken away any explosives while they are in transit or from any place where they are stored or used, and no person shall be in possession of explosives except as provided for in this Act and in any regulations made there under.

(2) Any person contravening any of the provisions of sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding five years or to both.

[S 14 am by Act 13 of 1994; 14 of 1995.]

15. Unlawful secretion of explosives

(1) No person shall secrete or otherwise hide or abandon any explosives.

(2) Any person contravening the provisions of sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding five years or to both.

[S 15 am by Act 13 of 1994; 14 of 1995.]

16. Possession or conveyance of explosives

Nothing in this Act shall apply to the possession or conveyance of any explosive taken as a sample for the purposes of carrying out the provisions of this Act or any regulations made there under:

Provided that the quantity of such explosive is not more than is reasonably necessary for the purposes aforesaid and the sample is conveyed and stored with all due precaution.

17. Destruction of explosives

(1) Where an Inspector of Explosives or an Inspector of Mines is of the opinion that an explosive, because of its condition or the circumstances in which it is found, could constitute a danger to persons or property, he may declare such explosive to be unsafe and shall thereafter take possession thereof and destroy or cause to be destroyed such unsafe explosive.

(2) Any person who willfully obstructs or resists the Inspector of Explosives or the Inspector of Mines in any of the powers conferred by the provisions of sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty five thousand penalty units or to a term of imprisonment not exceeding two and a half years or to both.

[S 16 am by Act 13 of 1994; 14 of 1995.]

18. Regulations

(1) The Minister may, by statutory instrument, make regulations for the better carrying into effect of this Act.

(2) In particular, and without prejudice to the generality of the power conferred by sub-section (1), regulations made there under may provide for—

(a) the regulation of the importation, exportation and transportation of explosives, by inland waterways, rail and road;

(b) the regulation of the storage and use of explosives;

(c) the regulation of the construction of explosives factories and magazines;

(d) the regulation of all sales and possession of explosives; or direction made under this Act, and prescribing procedures for dealing summarily with such contravention or failure to comply with any order given or direction made and to impose summary fines therefore.

19. Obstructing Inspectors

(1) No person shall obstruct an Inspector of Explosives, Inspector of Mines or Inspector of Machinery in the performance of his duties under this Act.

(2) If any person willfully delays any of the Inspectors referred to in sub-section (1) in the exercise of any power conferred upon him by or under this Act, or fails to comply with any order made under this Act or any regulation made there under or fails to produce any license, authorisation, sanction or permit, notice or document which he is required by or in pursuance of this Act to produce, or conceals or prevents, or attempts to conceal or prevent, a person appearing before or being examined by such Inspector, that person shall be deemed to have obstructed such Inspector in the performance of his duties under this Act.

(3) Any person who contravenes the provisions of sub-section (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty five thousand penalty units or to a term of imprisonment not exceeding two and a half years or to both.

[S 22 am by Act 13 of 1994; 14 of 1995.]

20. Factories Act not to apply to an explosives factory

Notwithstanding anything to the contrary contained in the Factories Act, the provisions of that Act shall not apply to an explosives factory. Factories Act not to apply to an explosives factory.

21. Repeal of Cap. 102

The Explosives Act is hereby repealed.