

CHAPTER 10:08 EXPLOSIVES ACT

Acts 9/1961, 38/1962, 55/1967, 41/1978 (s. 32), 11/1991 (s. 22), 20/1994 (s. 13), 22/2001 (s. 4); R.G.N.s 801/1963, 214/1964, 97/1969.

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AN ACT to make further and different provision for regulating and controlling the possession, purchase, acquisition, delivery, manufacture, storage, use, conveyance and handling of explosives; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement: 12th May, 1961.]

PART I
PRELIMINARY

1 Short title

This Act may be cited as the Explosives Act [*Chapter 10:08*].

2 Interpretation

In this Act—

“explosives” means gunpowder, nitro-glycerine, dynamite and other nitro-glycerine admixtures, gun-cotton, blasting powder, detonators, fuse and every other substance used to produce a practical effect by explosion, and any other substance or device declared by the President, by statutory instrument, to be an explosive for the purposes of this Act, but does not include any ammunition a licence to possess or deal in which is regulated by any other enactment, or fireworks manufactured for purposes of amusement;

“inspector” means the Chief Inspector of Explosives or an inspector of explosives referred to in section *twelve*;

“Minister” means the Minister of Mines or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“Railways” means the National Railways of Zimbabwe referred to in section 3 of the Railways Act [*Chapter 13:09*];

“sub-inspector” means a sub-inspector of explosives referred to in section *twelve*.

PART II

PURCHASE, POSSESSION AND DELIVERY OF EXPLOSIVES

3 Prohibition of purchase of explosives without an explosives permit

(1) Subject to this Act, no person shall purchase, acquire or have in his possession any explosive unless he holds an explosives permit in respect thereof granted under the regulations and in force at the time.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001.]

4 Exemption of employee from holding explosives permit

(1) A person employed by the holder of an explosives permit may have in his possession any explosives to which the explosives permit of his employer relates if—

(a) he has such explosives in the course of his employment; and

(b) he has in his possession written authority from the holder to have such explosives in his possession:

Provided that—

(i) where a group of employees is handling the explosives, only the person in over-all charge of that group shall be required to have the written authority;

(ii) if such employee is employed on a mining location, the written authority may be retained in the mine office.

(2) A person carrying on the business of a carrier or an employee of such a person may, without holding an explosives permit, have in his possession any explosive in the ordinary course of that business.

5 Restriction on delivery of explosives

(1) No person shall deliver any explosive to any other person unless such other person produces an explosives permit authorizing him to have such explosive in his possession or shows that he is, by virtue of the Act, entitled to have explosives in his possession without holding an explosives permit:

Provided that this section shall not be construed so as to prevent the delivery of explosives by a carrier or an employee of a carrier in the ordinary course of his business or employment as such.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001.]

PART III
MANUFACTURE OF EXPLOSIVES

6 Manufacturers to be licensed

(1) No person shall manufacture any explosive unless he is the holder of a licence granted under the regulations and he complies with the terms and conditions of such licence.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001.]

PART IV
STORAGE OF EXPLOSIVES

7 Prohibition of storage of explosives except in licensed premises

(1) No person shall keep or store explosives in or on any premises unless—

- (a) he is a holder of a licence granted under the regulations authorizing the keeping or storing of such explosives in or on such premises; and
- (b) he complies with the terms and conditions of such licence and with the provisions of the regulations.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001.]

8 Application for storage licence to be accompanied by certain information

An application for a licence to keep or store an explosive shall be accompanied by—

- (a) a plan of the premises in or on which the explosive is to be kept or stored and of the land on which such premises are situated, showing all buildings thereon, the land adjacent thereto and the buildings thereon, the uses to which such land and buildings are being put and the exact distances between the buildings marked on the plan; and
- (b) a description of the situation, character and construction of all buildings and works connected with the premises and the maximum amount of explosives to be kept or stored in each building; and
- (c) any other information which the Minister may require.

PART V
USE OF EXPLOSIVES

9 Use of explosives prohibited except under licence

(1) No person shall—

- (a) prepare, press home or fire an explosive charge or conduct any blasting operation unless—
 - (i) he is the holder of; or
 - (ii) he is under the direct supervision of the holder of;

a blasting licence granted under the regulations which permits the holder thereof to prepare, press home or fire the explosive charge or conduct the blasting operation, as the case may be;

- (b) cause or permit any other person over whom he stands in a position of authority to prepare, press home or fire an explosive charge or to conduct any blasting operation unless that other person—
 - (i) is the holder of; or
 - (ii) is under the direct supervision of the holder of;
- a blasting licence granted under the regulations which permits the holder thereof to prepare, press home or fire the explosive charge or conduct the blasting operation, as the case may be.

(2) For the purposes of subsection (1), a person shall be regarded as being under the direct supervision of the holder of a blasting licence only if he is being supervised by that holder and is at all times within the sight of and under the control of that holder.

(2a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001.]

PART VI
CONVEYANCE OF EXPLOSIVES

10 No explosives to be carried in public service vehicle

(1) In this section—

“public service vehicle” has the same meaning as it has in the Road Motor Transportation Act [Chapter 13:10].

(2) No person shall carry any explosive in or upon or by means of any public service vehicle which is carrying any passengers, or any passenger train or railway carriage in which passengers are carried.

(2a) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001.]

(3) This section shall apply to any public service vehicle operated by the Railways.

11 Explosives to be conveyed in accordance with regulations

(1) Save as otherwise provided in this Act, no person shall convey any explosive otherwise than in accordance with the provisions of the regulations.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001.]

PART VI

MISCELLANEOUS

12 Chief Inspector of Explosives, inspectors and sub-inspectors

For the purposes of this Act, there shall be—

(a) a Chief Inspector of Explosives;

(b) such number of inspectors of explosives and sub-inspectors of explosives as may be required;

whose offices shall be public offices and form part of the Public Service.

13 Powers of inspectors, sub-inspectors and certain police officers

(1) An inspector, sub-inspector or police officer of the rank of Assistant Inspector or above may—

(a) at any time enter and search—

(i) any premises on which explosives are manufactured or on which he has good reason to suspect that explosives are being manufactured; or

(ii) any mine, land or premises on which explosives are kept or used or on which he has good reason to suspect that explosives are being kept or used; or

(iii) any vehicle, including a boat, on which explosives are conveyed or on which he has good reason to suspect that explosives are being conveyed;

and make such inquiries as he may think fit:

Provided that he shall not enter or search any premises unless he believes on reasonable grounds that evidence relating to a contravention of this Act is to be found in those premises;

(b) require the occupier or other person for the time being in charge of any premises, mine or land referred to in subparagraph (i) or (ii) of paragraph (a) to—

(i) produce the licence authorizing the keeping, storing or manufacture of explosives in such premises;

(ii) furnish, without payment, for purposes of analysis or test, samples of explosives or ingredients of explosives or any substance found thereon which is suspected of being an explosive or an ingredient of an explosive;

(c) examine and make extracts from and copies of any book, record or other document found on any premises referred to in subparagraph (i) or (ii) of paragraph (a) and require an explanation of any entry therein;

(d) seize any explosives or ingredients of explosives or any book, record or other document found on any premises, mine, land or vehicle referred to in this subsection which, in his opinion, may afford evidence of an offence under this Act.

(2) An inspector or sub-inspector shall have such other powers as may be prescribed for the purpose of carrying out his duties under or ensuring compliance with this Act.

14 Penalty for obstructing inspector, sub-inspector or police officer

(1) Any person who—

(a) wilfully obstructs or hinders an inspector, sub-inspector or police officer in the exercise of the powers or performance of the duties conferred or imposed upon him by this Act; or

(b) disobeys any lawful order of an inspector, sub-inspector or police officer acting in terms of this Act; or

(c) on demand fails to answer as far as he may be able any question lawfully put to him by an inspector, sub-inspector or police officer exercising any powers or performing any duties conferred or imposed upon him by this Act; or

(d) gives information which is false in a material respect to an inspector, sub-inspector or police officer, whether such information is given in answer to any question or not;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(2) Notwithstanding anything to the contrary in paragraph (c) of subsection (1), a person may refuse to answer any question put to him by an inspector, sub-inspector or police officer which, if he were appearing in a court of law, he could not be compelled to answer on the grounds of privilege.

15 Revocation of permits and licences

(1) Any permit or licence granted in terms of this Act may be revoked by the Chief Inspector of Explosives if the holder thereof is convicted of an offence under the law of any country.

(2) Where a permit or a licence is revoked, the Chief Inspector of Explosives shall, by notice in writing, require the holder thereof to surrender it, and if the holder fails to surrender it within fourteen days from the date of the notice, he shall be guilty of an offence and liable to a fine not exceeding fifty dollars:

Provided that, where an appeal is brought against the revocation, this subsection shall not apply to that revocation unless the appeal is abandoned or dismissed and shall in that case have effect as if for the reference to the date of the notice there were substituted a reference to the date on which the appeal was abandoned or dismissed.

16 Appeal against refusal to grant permit or licence or revocation thereof

An appeal against the refusal to grant a permit or licence or the revocation thereof shall lie to the Minister whose decision shall be final, but no appeal shall lie against the result of any test or examination which, in terms of the regulations, any person desiring to obtain any permit or licence is required to undergo.

17 Penalties for endangering safety or causing loss of life

(1) In this section—

“explosion” includes a fire caused by an explosion.

(2) Any person who negligently causes an explosion shall be guilty of an offence and—

- (a) if property is damaged or destroyed by such explosion, shall be liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
- (b) if life is endangered by such explosion, shall be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
- (c) if death results from such explosion, shall be liable to a fine not exceeding level nine or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(3) Any person who, by any wilful act or omission, causes an explosion whereby life or property is endangered shall, if death does not result therefrom, be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]

(4) Nothing in this section shall be construed as exempting any person from being charged and punished under any other law or under the common law in respect of any act or omission as is described in this section.

18 Burden of proof that accused is holder of permit or licence

If in any summons or charge for a contravention of this Act it is alleged that the person accused is not the holder of a permit or licence, as the case may be, such person shall be presumed not to be the holder of such permit or licence, as the case may be, unless he proves the contrary.

19

[Section repealed by section 4 of Act 22 of 2001.]

20 Powers of inspectors as to breaches of regulations

(1) Where—

- (a) any person has in respect of an offence committed by him under any regulations made under this Act—
 - (i) been warned by an inspector to appear in an inferior court; or
 - (ii) been informed by an inspector that it is intended to institute criminal proceedings against him for that offence; and
- (b) an inspector has reasonable grounds for believing that the court which will try that person for that offence will, on convicting him of that offence, not impose a sentence of imprisonment or a fine exceeding level three;

that person may sign and deliver to the inspector a document admitting that he is guilty of the said offence and deposit with the inspector such sum of money as the inspector may fix, not exceeding level three, and that person shall thereupon not be required to appear in court to answer a charge of having committed the said offence.

[Subsection amended by section 4 of Act 22 of 2001.]

(2) The document referred to in subsection (1), when signed and delivered in terms of that subsection, shall forthwith be transmitted to the clerk of the court before which that person would otherwise have appeared and shall be entered by the clerk in the records of that court.

(3) As soon as the document referred to in subsection (1) has been recorded in terms of subsection (2), it shall be laid before the court and the court shall thereupon—

- (a) proceed to convict that person of the offence charged and forthwith sentence him to a fine not exceeding level three in accordance with this Act; or
- (b) by endorsement on the document, signify its refusal to convict that person in accordance with the provisions of this subsection.

[Subsection amended by section 4 of Act 22 of 2001.]

(4) If the sum deposited in terms of subsection (1)—

- (a) is not sufficient to pay the fine imposed in terms of subsection (3), the balance remaining due together with the costs of recovery shall be recovered from the offender in the manner provided by section 348 of the Criminal Procedure and Evidence Act [*Chapter 9:07*];
- (b) is greater than the fine imposed in terms of subsection (3), the difference shall be refunded to the offender.

(5) Any magistrate of the court which will try the person concerned for an offence referred to in subsection (1) may advise the inspector as to the amount of money which the court is likely to consider an appropriate fine in any case and, in fixing the sum of money to be deposited under subsection (1), the inspector shall have regard to such advice.

(6) For the purpose of deciding whether to convict the person concerned in accordance with subsection (3) or determining the amount of the fine to be imposed, the court may have regard to any statements relevant to the offence charge which have been given to an inspector or police officer by any person having knowledge thereof.

(7) Where the document referred to in subsection (1) purports to have been signed by a director, manager or secretary of a corporate body as the representative of such corporate body, such director, manager or secretary shall, notwithstanding anything contained in proviso (i) to subsection (3) of section 385 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], be presumed to have been authorized by that corporate body to plead guilty on its behalf unless the contrary is proved.

(8) Where the magistrate who has convicted a person under paragraph (a) of subsection (3) is satisfied that that person should not have been convicted, he may, notwithstanding anything in any law, set aside that conviction and order the refund to the person concerned of the fine paid by him in respect thereof.

21 Forfeiture of explosives

Where any person is convicted of an offence in terms of this Act, the court before which he is convicted may make such order as to the forfeiture or disposal of any explosive found in his possession as the court thinks fit.

22 Safeguarding explosives in possession of any person

(1) In the interests of public safety the Minister may at any time direct that any explosive in the possession of any person in any district or any explosive in transit within Zimbabwe be taken possession of by any person authorized thereto by the Minister, hereinafter called an “authorized person”, for the purpose of safe storage.

(2) If the Minister has, in terms of subsection (1), issued any direction with reference to any district, each person within that district shall, on being informed by an authorized person of the intention to take possession of the explosives in his possession, take immediate steps for the packing of the explosives in his possession for removal to a place of safety.

(3) A receipt shall be given by the authorized person to the person from whom the explosives are received for the number of packages of explosives taken possession of in terms of this section.

(4) Any explosives taken possession of in terms of this section shall be returned to the person from whom they were received at such time as the Minister may determine.

(5) Any person who fails to comply with any direction issued under this section shall be guilty of an offence.

23 Powers to be cumulative

All powers given by this Act shall be deemed to be in addition to and not in derogation from any other powers conferred upon any local authority by any other enactment.

24 Savings

(1) Nothing in this Act shall apply to the possession or conveyance of any explosive taken as a sample for the purposes of this Act by an inspector or other duly authorized person so long as the quantity is not more than is reasonably necessary for the performance of his duty, and every such sample shall be kept and conveyed with all due precaution.

(2) Except in so far as other provision is expressly made in this Act, this Act shall not apply to the conveyance and handling of explosives which are being conveyed on any railway or road transport service carried on the Railways if in respect thereof by-laws made under section *twenty-six* are in force.

25 Certain State employees bound by section 9

Notwithstanding any rule of law whereunder this Act does not bind the State, section *nine* and the regulations made for the purpose of controlling the use of explosives or of the control and regulation of blasting operations

shall apply to persons in the service of the State in their capacity as such, other than members of the Defence Forces:

Provided that nothing in this section shall be construed so as to render lawful the use of explosives or the carrying out of blasting operations by any member of the Defence Forces on any occasion or in any circumstances not authorized by the State.

26 Railways to make by-laws in regard to conveyance of explosives

(1) The Railways shall, with the approval of the Minister, make by-laws in terms of section 21 of the Railways Act [*Chapter 13:09*] for regulating the conveyance and handling of explosives on the railways and any road transport service carried on by the Railways.

(2) By-laws referred to in subsection (1) may provide for all or any of the following matters in respect of the railways and any road transport service carried on by the Railways—

- (a) determining the notice to be given of the intention to send explosives for conveyance as merchandise on the railways or road transport service;
- (b) regulating, subject to any general regulations with respect to packing, the mode of stowing and keeping explosives for conveyance and the giving of notice by brands, labels or otherwise of the nature of the package containing the explosives;
- (c) regulating the description and construction of carriages or vehicles to be used in the conveyance of explosives;
- (d) prohibiting or subjecting to conditions and restrictions the conveyance of explosives with any article or substance;
- (e) fixing the places and times at which the explosives are to be loaded and unloaded and the quantity to be loaded or unloaded or conveyed at one time;
- (f) determining the precautions to be observed in conveying explosives and in loading and unloading the carriages or vehicles used in such conveyance;
- (g) generally, for protecting, whether by means similar to those mentioned in this subsection or not, persons and property from danger.

(3) By-laws referred to in subsection (1), when approved by the Minister, shall apply to the Railways, the agents and employees of the Railways and to persons using the railways or the road transport service carried on by the Railways or the premises connected therewith and occupied by or under the control of the Railways.

(4) By-laws referred to in subsection (1) may impose a penalty for any breach thereof by any person, whether such person is the agent or employee of the Railways or not, and may impose different penalties for different breaches and for successive or continuous breaches, but no penalty shall exceed level two for each breach or level one for each day during which the breach continues, and may provide for the forfeiture of all or any part of the explosives in respect of which, or being in the carriage or train or other vehicle in respect of which, the breach of the by-law has taken place.

[Subsection amended by section 4 of Act 22 of 2001.]

27 Regulations

(1) The Minister may make regulations as to all or any of the following matters—

- (a) the construction and management of explosives magazines and the measures to be taken for preventing entry into such magazines, whether such entry is lawful or unlawful, including the provision of watchmen, and measures for the detection of loss or theft of explosives;
- (b) the storage of explosives, whether in explosives magazines or elsewhere;
- (c) the conditions under which explosives may be manufactured;
- (d) the use of explosives;
- (e) the control and regulation of blasting operations, including the manner in and times at which such operations may be carried out, the maximum quantity of explosive that may be used in any single charge, the number of charges that may be exploded at any one time and the interval of time that must elapse between explosions;
- (f) the packing, conveyance and handling of explosives;
- (g) the safe disposal of explosives which—
 - (i) are held by any person in contravention of this Act; or
 - (ii) have deteriorated, been damaged or otherwise become unfit for use; or
 - (iii) have been abandoned or are no longer required by the owner thereof;
- (h) the inquiry into the circumstances of explosions, including outbreaks of fire caused or suspected to have been caused by explosives;
- (i) the prevention of trespass in or upon any place where explosives are kept;
- (j) the search of employees employed at any place where explosives are kept or used;
- (k) the form of any application for a permit or licence under this Act, the form of any such permit or licence, the fees, if any, to be paid for any permit or licence, and the duration thereof;

- (l) the granting of permits or licences required by this Act, the terms and conditions to be satisfied before any permit or licence is granted, the terms and conditions of such permits or licences, the persons who may grant them, and the suspension and cancellation of such permits or licences;
- (m) the keeping of registers;
- (n) prescribing any other matter which under this Act is to be prescribed;
- (o) the sale, purchase or acquisition of explosives;
- (p) measures to be taken at any workings before or after blasting operations have taken place;
- (q) the duties of inspectors and sub-inspectors;
- (r) the duties of any holder of a permit or licence granted under this Act;
- (s) the appointment of boards for the purposes of the granting of any permit or licence, the functions, powers and duties of any such board and the remuneration and allowances to be paid to the members of any such board;

and, generally, for the protection of life and property and for the better carrying out of the objects and purposes of this Act.

(2) Regulations made for matters referred to in paragraph (e) of subsection (1) may provide for the recognition for the purposes of this Act of blasting licences, certificates or permits granted in terms of any law in force in any country approved by the Minister.

(3) Regulations in terms of this section may prescribe offences and provide for penalties for any breach thereof and in so providing may fix different penalties for successive or continuous breaches:

Provided that no penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001.]