



Tonga

# **EXPLOSIVES ACT**

**Chapter 20.12**

**2016 Revised Edition**





## EXPLOSIVES ACT

### Arrangement of Sections

#### Section

1	Short title .....	5
2	Interpretation .....	5
3	Harbour master of port .....	6
4	Regulations .....	6
5	Offences committed by agent or servant .....	7
6	Prohibiting the manufacture, possession or importation of explosives .....	8
7	Powers of inspection, search, seizure detention or removal .....	8
8	Testing of explosives before importation .....	8
9	Notice of accidents .....	8
10	Inquiry into accidents .....	9
11	Dangerous acts .....	9
12	General penalty .....	9
13	Awards to informers .....	9
14	Forfeiture of explosives .....	9
15	Seizure and sale of vessels .....	10
16	Abetting or attempting to commit offence .....	10
17	Power to arrest without warrant .....	10
18	Power to arrest without warrant persons committing dangerous offences .....	10
19	Stop and search for explosives .....	11
20	Presumption as to possession .....	11
21	Saving .....	11
22	Authorising magazine or hulks .....	11
23	Fees .....	11

#### ENDNOTES

**12**





## EXPLOSIVES ACT

### AN ACT TO REPEAL THE EXPLOSIVES SUBSTANCES ACT AND TO MAKE BETTER PROVISION FOR THE REGULATION, USE, POSSESSION, TRANSPORT, MANUFACTURE, SALE, STORAGE, IMPORT AND EXPORT OF EXPLOSIVES<sup>1</sup>

Commencement [31st January, 1972]

#### 1 Short title

This Act may be cited as the Explosives Act.

#### 2 Interpretation

In this Act, unless a contrary intention otherwise appears —

“**carriage**” includes any carriage, wagon, cart, truck or other vehicle used for the conveyance of goods or passengers by land in whatever manner the same may be propelled or moved;

“**explosive**” —

- (a) means gunpowder, nitro-glycerine, dynamite, guncotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those abovementioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and
- (b) includes fog-signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined;

“**export**” with its grammatical variations and cognate expressions means to take or cause to be taken out of the Kingdom;

“**import**” with its grammatical variations and cognate expressions means to bring or cause to be brought into the Kingdom;

“**licensing officer**” means the Minister of Police and includes any officer appointed by him in writing in that behalf;

“**manufacture**” includes the preparation of any component parts of an explosive, the admixture or other treatment of the same, the breaking up or unmaking of any explosive or making fit for use any damaged explosive, and the process of remaking, altering or repairing any explosive;

“**serious injury**” means any one or more of the following —

- (a) a fractured skull, pelvis, arm, thigh, spine, forearm or leg;
- (b) a dislocated shoulder;
- (c) the amputation of an arm, hand, finger, leg, foot or toe;
- (d) the loss of sight of an eye;
- (e) asphyxia;
- (f) any other bodily injury, including haemorrhage or burns if such is likely to endanger life, cause permanent incapacity or to disable the injured person from following his ordinary occupation for a period of 5 days or more.

### 3 Harbour master of port

All powers and duties conferred and imposed by this Act or by any regulations made thereunder on the harbour master of a port may, in places where there is no harbour master, be exercised and performed by any officer whom the Prime Minister may from time to time by notification in the Gazette appoint in that behalf.

### 4 Regulations<sup>2</sup>

- (1) The Cabinet may make regulations to control or prohibit, except under or in accordance with the conditions of a licence granted as provided by such regulations, the construction of magazines and the manufacture, possession, use, sale, storage, transport, importation and exportation of explosives or any specified class of explosives. All licences under this Act shall be granted and issued by the licensing officer or any other officer appointed by him in writing in that behalf.
- (2) Without prejudice to the generality of the foregoing powers, regulations under this section may provide for all or any of the following among other matters, that is to say —

- (a) the fees to be charged for licences and the other sums, if any, to be paid for expenses by applicants for licences;
  - (b) the manner in which applications for licences shall be made and the matters to be specified in such applications;
  - (c) the form in which and the conditions on and subject to which licences shall be granted;
  - (d) the period for which licences are to remain in force; and
  - (e) the exemption absolutely or subject to conditions of any explosives from the operation of the regulations.
- (3) The Cabinet may by regulations impose penalties on all persons constructing magazines and manufacturing, possessing, using, selling, storing, transporting, importing or exporting explosives in breach of the regulations or otherwise contravening the regulations:

Provided that the maximum penalty which may be imposed by any such regulations shall not exceed —

- (a) in the case of a person so importing, exporting or manufacturing an explosive, a fine of \$400 or imprisonment for a period not exceeding one year or to both such fine and imprisonment;
- (b) in the case of a person so possessing, selling, storing, using or transporting an explosive or otherwise contravening the regulations, a fine of \$200 or imprisonment for a period not exceeding 6 months or to both such fine and imprisonment;
- (c) in any other case a fine of \$100.

## 5 Offences committed by agent or servant

- (1) Whenever under this Act any person mentioned in a licence issued under the provisions hereof is declared liable to any punishment, penalty or forfeiture for any act committed by him, he shall be liable to the same punishment, penalty or forfeiture for every similar act committed by any agent or servant employed by him in or about the licensed premises.

Every agent or servant employed by any person mentioned in a licence shall also be liable to every punishment, penalty or forfeiture prescribed for offences against this Act as fully and effectually as if such agent or servant had been the person mentioned in the licence.

- (2) Every person employed in or about any premises licensed under this Act shall be deemed to have been so employed by the person mentioned in the licence unless and until the contrary be proved.

## 6 Prohibiting the manufacture, possession or importation of explosives

- (1) Notwithstanding anything in this Act contained the Prime Minister may, from time to time, by notification in the Gazette —
  - (a) prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is used so as to cause danger or annoyance to the public or which is of so dangerous a character that, in the opinion of the Prime Minister, it is expedient for the public safety to issue the notification; and
  - (b) rescind or vary any notification under this section.
- (2) Any person manufacturing, possessing or importing an explosive in contravention of a notification issued under this section shall be liable to a fine not exceeding \$400 or to imprisonment for a period not exceeding one year and, in the case of importation by water, the owner and master of the vessel in which the explosive is imported shall, in the absence of reasonable excuse, each be liable to a fine not exceeding \$400 or to imprisonment for a term not exceeding one year.

## 7 Powers of inspection, search, seizure detention or removal<sup>3</sup>

The Cabinet may make regulations consistent with this Act authorizing any officer, either by name or in virtue of his office, with or without warrant —

- (a) to enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a licence granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the regulations made thereunder;
- (b) to search for explosives therein;
- (c) to take samples of any explosive found therein on payment of the value thereof; and
- (d) to seize, detain, remove and, if necessary, destroy any explosive found therein.

## 8 Testing of explosives before importation<sup>4</sup>

The Cabinet may make regulations as to the tests to which various classes or any particular class of explosives may or shall be subjected before the permission is granted to land the same in the Kingdom.

## 9 Notice of accidents

Whenever there occurs in or about or in connection with any place in which an explosive is manufactured, possessed, or used or any carriage or vessel either



conveying an explosive or on or from which an explosive is being loaded, or unloaded, any accident by explosive or by fire attended with loss of human life or serious injury to person or property, or of a description usually attended with such loss or injury, the occupier of the place or the master of the vessel or the person in charge of the carriage, as the case may be, shall forthwith give notice thereof to the officer in charge of the nearest police station.

## **10 Inquiry into accidents**

- (1) Any Magistrate who is of opinion that an inquiry is necessary into the cause of any accident within his jurisdiction of the description mentioned in section 9 may make such inquiry.
- (2) Any Magistrate making an inquiry under this section shall, for the purposes of conducting the inquiry, have all the powers which he would have in holding an inquiry into an offence within his jurisdiction.

## **11 Dangerous acts**

Any person found committing wilfully or negligently any act which tends to cause explosion or fire in or about any factory, magazine, hulk, vessel, storehouse or shop containing explosives shall be liable, in addition to any other penalty to which he may be liable, to a fine not exceeding \$100.

## **12 General penalty**

Any person who is guilty of any contravention or breach of any of the provisions of this Act or of any regulations made thereunder for which no special penalty has been prescribed shall be liable to a fine not exceeding \$50.

## **13 Awards to informers**

In case of a conviction under any section of this Act or for breach of any regulation thereunder involving a fine, it shall be lawful for the Court inflicting such fine to direct, on the application of the police officer in charge of the prosecution, that any part, not exceeding one-half thereof, shall be paid to any person who has, or divided in such proportions as the Court may order amongst any persons who have, given such information to the police as has led to the conviction of the offender or offenders.

## **14 Forfeiture of explosives**

Whenever a person is convicted of an offence punishable under this Act or the regulations made thereunder, the Court before which he is convicted may direct that the explosive, or ingredient of the explosive, or the substance, if any, in respect of

which the offence has been committed, or any part of that explosive, ingredient or substance, shall with the receptacles containing the same, be forfeited and may be destroyed or disposed of in such manner as the Minister of Police may direct.

## **15 Seizure and sale of vessels**

Where the owner or master of a vessel is adjudged under this Act to pay a fine for an offence committed with or relating to that vessel, the Court may, in addition to any other power which it may have for the purpose of compelling payment of the fine, direct it to be levied by seizure and sale of the vessel and the tackle, apparel and furniture thereof or so much thereof as is necessary.

## **16 Abetting or attempting to commit offence**

Whoever abets the commission of an offence punishable under this Act or the regulations made thereunder or attempts to commit any such offence and in such attempt does any acts towards the commission of the same, shall be liable to the same penalty as if he had committed the offence.

## **17 Power to arrest without warrant**

- (1) Notwithstanding anything which may appear to the contrary, any person who is found manufacturing, possessing, using, selling, storing, transporting, importing or exporting explosives in such a manner or under such circumstances as to afford reasonable grounds for suspicion that the same may be used for any unlawful purpose, may be apprehended without warrant by any person and detained in custody.
- (2) If any person be apprehended by a person not being a police officer, he shall be forthwith taken to a police station or handed over to a police officer.
- (3) Every person arrested by virtue of any power given by this Act shall together with any article as to which any offence may have been committed or attempted to be committed, be taken to a police station and conveyed as soon as conveniently may be before a Magistrate to be dealt with according to law.

## **18 Power to arrest without warrant persons committing dangerous offences**

Whoever is found committing any act punishable under this Act or the regulations made thereunder which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port or any carriage or vessel, may be arrested without a warrant by a police officer or by the occupier of, or the agent or servant of, or other person authorized by, the occupier of that place, or by an agent or servant of, or other person authorized by, the harbour master of the

port, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

## **19 Stop and search for explosives**

It shall be lawful for any police officer to stop and search for explosives any person whom he may find in any street or other public place at any hour of the day or night who acts in a suspicious manner or whom he may reasonably suspect of having explosives in his possession.

## **20 Presumption as to possession**

Every person who is proved to have had in his possession or under his control anything whatever containing any explosive shall, until the contrary is proved, be deemed to have been in possession of such explosive.

## **21 Saving**

- (1) Nothing in this Act shall apply to the manufacture, possession, use, sale, storage, transport, importation or exportation of any explosive —
  - (a) by order of the Government; or
  - (b) by any person employed under the Government in the execution of this Act or as a keeper of a magazine, artisan, soldier, sailor, police officer or otherwise, or enrolled as a volunteer, in the course of his employment or duty as such.
- (2) Nothing in this Act shall apply to any friendly vessel of war.

## **22 Authorising magazine or hulks**

It shall be lawful for the Prime Minister to authorize the erection of such magazines or the establishment of such hulks as he may consider necessary for the storage of Government explosives or for the storage or safe custody of explosives belonging to other persons, and to fix a scale of fees to be paid for use of Government magazines or any portion thereof.

## **23 Fees<sup>5</sup>**

The Cabinet may, from time to time, make regulations consistent with this Act to determine the fees to be charged under this Act, and may direct by whom and in what manner the same are to be collected and accounted for.

**ENDNOTES**

---

<sup>1</sup> 1988 Revised Edition Cap. 40 — Act 9 of 1971

Amended by Act 42 of 2010, commencement 24 November 2010

<sup>2</sup> Amended by Act 42 of 2010

<sup>3</sup> Amended by Act 42 of 2010

<sup>4</sup> Amended by Act 42 of 2010

<sup>5</sup> Amended by Act 42 of 2010