

**THE EXPLOSIVES BILL, 2018**

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**SCHEDULE-AUTHORIZED EXPLOSIVES**

**THE EXPLOSIVES BILL, 2018**

**A Bill for**

**AN ACT of Parliament to make provision for the regulation of the possession, purchase, acquisition, delivery, manufacture, storage, use, conveyance and handling of explosives and for connected purposes.**

**ENACTED** by the Parliament of Kenya as follows—

**PART I- PRELIMINARY**

Short title and commencement.

**1.** This Act may be cited as the Explosives Act, 2018 and shall come into force on such date as the Cabinet Secretary may, by notice in the Gazette, appoint.

Interpretation.

**2.** In this Act, unless the context otherwise requires—

“authorized explosive” means any explosive specified in the Schedule, and any other explosive which the Minister may declare, by notice in the *Gazette*, to be an authorized explosive;

“blasting material” means any explosive used for the purpose of blasting;

“Cabinet Secretary” means the Cabinet secretary for the time being responsible for internal security;

“Chief Inspector of Explosives” means the Chief Inspector of Explosives appointed under section 18;

“Committee” means the Explosives Licensing Committee established under section 4;

“explosive” means —

- (a) gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powder, fulminate of mercury or of other metals, a coloured fire and any other substance, whether similar to those mentioned herein or not, which is used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect;
- (b) any fuse, rocket, detonator or cartridge and every adaptation or preparation of an explosive as herein defined;
- (c) any substance specified in the Schedule; or
- (d) any other substance which the Cabinet Secretary may, by notice in the *Gazette*, declare to be an explosive, but does not include ammunition as defined in the Firearms Act (now repealed);

“explosives factory” means any site that is licensed under this Act for the manufacture of any explosives, together with every mound,

building, including an explosives magazine and work thereon for whatsoever purpose used;

“explosives magazine” means any building licensed under this Act for the storage of explosives;

“fireworks” means a device containing gun powder and other combustible chemicals which cause spectacular effects and explosions when ignited, used for display, amusement or in celebrations;

“inspector” unless otherwise qualified, means a chief inspector or an inspector of explosives, or any person deputed to act as an inspector under section 18;

“manufacture” means the on-site 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;

“premises” means any land, road, harbour, river, building, structure, ship, boat or other vessel, or any part thereof, or any tent, railway truck, motor vehicle, cart, van or other vehicle; and

“Strategic Goods Control Committee” means the Strategic Goods Control Committee established under the Strategic Goods (Security Control) Act.

Application.

**3.** This Act shall not apply to—

- (a) the importation, storage, use or transportation of any explosive by the Kenya Defence Forces, by any other armed forces lawfully in Kenya, or by any other force or service constituted by or under any written law and lawfully in possession of explosives;
- (b) any ammunition a licence to possess or to deal which is regulated by any other law;
- (c) the possession or transportation of any explosive taken as a sample for the purpose of this Act by an inspector or other duly authorized person, provided the quantity is not more than is reasonably necessary for the performance of his duty and every sample is kept and transported with all due precaution; and
- (d) the keeping for sale of fireworks in such quantities and subject to such conditions as may be prescribed by the regulations.

## **PART II—THE EXPLOSIVES LICENSING COMMITTEE**

Establishment of the Committee.

**4.** (1) There is established the Explosives Licensing Committee which shall comprise of —

- (a) a Chairperson appointed by the Cabinet Secretary;

- (b) one representative of the Kenya Defence Forces;
- (c) one representative of the National Police Service;
- (d) one representative of the National Intelligence Service;
- (e) one representative of the Attorney-General;
- (f) one representative of the Principal Secretary responsible for matters relating to Agriculture; and
- (g) the Chief Inspector of Explosives.

(2) The Chief Inspector of Explosives shall be the Secretary to the Committee.

(3) The quorum of the Committee shall be five members.

(4) The Committee shall regulate its own procedure subject to this Act.

Functions of the Committee.

**5.** The Committee shall—

- (a) issue, vary or terminate, any license or permit, issued under this Act;
- (b) maintain a register of all manufacturers and dealers of explosives under this Act;
- (c) establish, maintain and monitor a centralized record management system under this Act; and
- (d) perform any other function conferred on it by this Act or any other written law.

### **PART III—MANUFACTURE, SALE, PURCHASE, POSSESSION AND DELIVERY OF EXPLOSIVES**

Restriction of manufacture of explosives.

**6.** (1) No person shall manufacture any authorised explosive unless that person is the holder of a licence issued under this Act.

(2) A person who intends to manufacture an authorised explosive shall apply for a licence in the prescribed form, upon payment of the prescribed fees.

(3) The Committee may, on consideration of an application made under sub section (2) approve or refuse to grant the application.

(4) Where the Committee approves an application, the details of the applicant shall be entered in the register and the Committee shall issue a licence.

(5) The Committee may refuse to grant an application made under sub section (2) if —

- (a) the applicant falsely represents or conceals any material fact or submits misleading information, including submitting a forged document relating to the application;

- (b) the applicant has been convicted for an offence under this Act;
- (c) the applicant is a subject of ongoing national security related civil or criminal proceedings;
- (d) the applicant is of unsound mind; or
- (e) there exists any other national security concerns.

(6) Any person who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine not exceeding fifty million shillings or to imprisonment for a term not exceeding ten years or to both.

Sale of explosives.

**7.** (1) No person shall sell, deal in or dispose of any authorised explosive unless he is in possession of a licence issued under this Act, with the approval of the Strategic Goods Control Committee.

(2) No person shall sell or dispose of authorised explosives to any person who fails to produce, at the time of the transaction, a permit nor shall any person sell or dispose of any such materials more than the quantity referred to in such permit.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall be liable to a fine not exceeding fifty million shillings or to imprisonment for a term not exceeding ten years, or to both.

Prohibition of purchase of explosives without an explosives permit.

**8.** (1) No person shall purchase, acquire or have in his possession any authorised explosive unless he holds a permit in respect thereof issued under this Act and in force at the time.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both.

Exemption of employee from holding a permit.

**9.** (1) A person employed by the holder of a permit may have in his possession any explosives to which the 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 shall be retained in the mine site office.

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

explosive in the ordinary course of that business.

Restriction on delivery of explosives.

**10.** (1) No person shall deliver any explosive to any other person unless such other person produces a permit authorizing him to have such explosive in his possession.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both.

Manufacture or possession of unauthorised explosives.

**11.** (1) No person shall manufacture, deal in or possess any unauthorised explosive.

(2) A person who contravenes subsection (1) commits an offence.

#### **PART IV—STORAGE AND USE OF EXPLOSIVES**

Prohibition of storage of explosives except in licensed premises.

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

- (a) he is a holder of a licence granted under this Act 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 this Act.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding fifty million shillings or to imprisonment for a term not exceeding ten years or to both.

Application for storage licence.

**13.** An application for a licence to keep or store an explosive shall be made to the Committee in the prescribed form and 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 quantity of explosives to be kept or stored in each building;
- (c) ownership documents for the premises or land or a lease;
- (d) the prescribed fee; and
- (e) any other information which the Cabinet Secretary may prescribe.

Application for licence to erect or use explosives magazine.

**14.** No person shall erect an explosives magazine or use a building as an explosives magazine unless he is the holder of a licence issued under this Act.

Unlicensed explosives magazines.

**15.** Any person who establishes, erects, maintains or uses an explosives magazine for the storage of explosives, otherwise than in accordance with a valid licence issued under this Act, commits an offence and shall on conviction be liable to a fine not exceeding fifty million shillings or to imprisonment for a term not exceeding ten years or to both.

Use of explosives prohibited except under a licence.

**16.** (1) No person shall conduct any blasting operation unless —

- (a) he is the holder of; or
- (b) he is under the direct supervision of the holder of a permit to use blasting materials issued under this Act.

(2) No person shall cause or permit any other person to prepare or fire an explosive charge or to conduct any blasting operation unless that other person —

- (a) is the holder of; or
- (b) is under the direct supervision of the holder of a permit to use blasting material granted under this Act.

(3) For the purposes of subsection (1) and (2), a person shall be regarded as being under the direct supervision of the holder of a permit to use blasting material 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.

(4) Any person who contravenes subsection (1) or (2) commits an offence and shall on conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years or to both.

(5) The Committee shall not issue a permit under this section unless the Committee is satisfied that the applicant may be safely entrusted with the use of blasting materials, and that there is necessity for his using the same.

Prohibition of conveyance of explosives without permit.

**17.** (1) No person shall transport explosives or cause them to be transported within Kenya, except in accordance with a permit in writing issued by the Committee:

Provided that no permit shall be required for the transportation of explosives within any land or property belonging to or occupied by the person conveying or authorizing the transportation of the explosives.

(2) No person shall carry any explosive in or upon or by means of any—

- (a) public service vehicle;
  - (b) passenger train or railway carriage;
  - (c) aircraft;
  - (d) water vessel; or
  - (e) other means of conveyance,
- in which passengers are carried.

(4) Any person who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine not exceeding fifty million shillings or to imprisonment for a term not exceeding ten years or to both.

(5) In this section “public service vehicle” has the meaning assigned to it in the Traffic Act.

Cap. 403.

### **PART V—INSPECTORS**

Appointment of inspectors.

**18.** (1) There shall be a Chief Inspector of Explosives, inspectors of explosives and such other officers as may be necessary, under whatever title, as may from time to time be determined for the purposes of this Act.

(2) The Cabinet Secretary may designate other persons to act as inspectors in certain localities and for certain purposes and in so far as any such person is authorized so to act he shall have the same powers and be subject to the same duties as are conferred and imposed upon inspectors by this Act.

Powers of inspectors to enter and inspect premises.

**19.** (1) An inspector shall, for the purposes of this Act, with a warrant, have full and free access to any building, place, property, documents, network or data storage device for the purposes of administering this Act.

(2) Where an inspector enters upon any premises in accordance with the provisions of this section, he may —

- (a) require any person therein to produce any books, accounts or other documents, including computerized data, or other record, whether in print or electronic format, or items which such person is required to keep under the provisions of this Act;
- (b) require the occupier or other person for the time being in charge of any explosives factory, explosives magazine or other premises to furnish, for purposes of analysis or test, samples of explosives or ingredients of explosives or any substance found therein or suspected of being an explosive or an ingredient of an explosive;
- (c) examine any books, accounts or other documents, including computerized data, or other record, whether in print or electronic format, facility, apparatus, equipment, device or item and make copies of or take extracts from any such books, accounts,

- documents or records;
- (d) seize or detain any books, accounts or other documents, including computerized data, or other record, whether in print or electronic format, facility, apparatus, equipment, device or item which contains or is reasonably suspected to contain information as to any offence suspected to have been committed under this Act;
- (e) require any person therein or the employees to answer questions relating to—
  - (i) any book, data, document or other record, or item;
  - (ii) any entry in any book, data, document or other record; or
  - (iii) any other item that the inspector deems necessary; or
- (f) require at the expense of any person therein, to open and examine any container, envelope, package or other items and materials in any such premises.

(3) If by reason of its nature, size or amount, it is not practicable to remove any items, books, accounts or other documents, including computerized data, or other record, whether in print or electronic format, seized or detained under this section, the seizing inspector shall, by any means, seal such items, books, accounts or other documents, including computerized data, or other record in the place or premises or container in which it is found.

(4) Where the inspector acting under the provisions of this Act is unable to obtain free access to any place or premises or to any container in that place or premises, he may, at any time, enter such place or premises and open such container in such manner, if necessary by force, as he may think necessary.

(5) Where, on the entry upon any place or premises under the provisions of this Act, any explosives are found in relation to which any offence has been committed, the explosives shall be liable to forfeiture.

Entry and search of premises without warrant.

**20.** An inspector may without a warrant exercise any power referred to in section 19 where —

- (a) the person who is competent to do so consents: or
- (b) that delay in obtaining the warrant would defeat the object of the warrant.

Penalties for obstructing inspector or refusing to answer inquiries, etc.

**21.** Any person who —

- (a) wilfully obstructs or hinders any inspector in the exercise of the powers or duties conferred or imposed upon him by this Act;
- (b) disobeys any lawful order of an inspector;
- (c) upon demand fails to answer as far as he may be able any question lawfully put by an inspector; or
- (d) gives false information to an inspector, whether in answer to any such question or not,

commits an offence and shall on conviction be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

Power to stop dangerous methods.

**22.** (1) If an inspector finds any method of work, storage, packing or use in connection with explosives to be in conflict with this Act or to be, in his opinion, dangerous to the national security or to public safety, he may in his discretion —

- (a) confiscate and remove the explosives;
- (b) by order in writing require the immediate discontinuance of such method; or
- (c) by order in writing require such remedial measures to be taken as in his opinion are necessary.

(2) Any person who is dissatisfied with a confiscation or requisition done or made under this section may within thirty days thereof appeal to the Chief Inspector of Explosives, who shall give his decision thereon with the least possible delay.

(3) If an appellant is dissatisfied with a decision of the Chief Inspector of Explosives given under this section he may within thirty days of such decision appeal to the Cabinet Secretary, whose decision shall be final.

(4) The provisions of this section shall be without prejudice to any prosecution.

Duty of owner of an explosives magazine to make special rules.

**23.** (1) Every owner of an explosives magazine or of any premises where explosives are dealt in shall, subject to the approval of the Chief Inspector of Explosives, make special rules, not inconsistent with this Act, for regulating the persons employed in that magazine with a view to securing the observance therein of the provisions of this Act and the rules, the safety and proper discipline of all such persons and the safety of the public.

(2) The owner of any such an explosives magazine or premises shall take all reasonable steps for ensuring or enforcing the observance of any such special rules.

(3) An owner of an explosives magazine who contravenes subsection (1) commits an offence and shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years.

Endangering life or property through explosions.

**24.** (1) Any person who endangers the life or property of another person by causing an explosion commits an offence and shall on conviction be liable to the following penalties —

- (a) if the explosion is negligently caused and property is endangered, to a fine not exceeding five million shillings or to

- imprisonment for a term not exceeding five years, or to both;
- (b) if the explosion is negligently caused and life is endangered, to a fine not exceeding fifty million shillings or to imprisonment for a term not exceeding ten years, or to both;
- (c) if the act or omission causing the danger to life or property is wilful the maximum penalty hereinbefore mentioned in this section shall, if death does not result therefrom, be fifteen years' imprisonment without the option of a fine; or
- (d) if the explosion is negligently caused and death results, to imprisonment for life.

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

Making, possession or control of explosive for unlawful object.

**25.** Any person who makes or knowingly has in his possession or under his control any explosive, in circumstances which give rise to reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, unless he shows that he made it or had it in his possession or under his control for a lawful object, commits an offence and shall on conviction be liable to imprisonment for life, and the explosive shall be forfeited.

## **PART VI—MISCELLANEOUS PROVISIONS**

Powers of the Committee.

**26.** (1) Any application for a license under this Act shall be made to the Committee.

(2) The Committee may vary, suspend or revoke a license issued under this Act.

(3) In exercising the powers conferred under subsection (2), the Committee shall where applicable comply with Article 47 of the Constitution and the Fair Administrative Action Act, 2015.

No. 4 of 2015.

(4) Any person aggrieved by a decision made by the Committee under subsections (1) and (2) may appeal to the Cabinet Secretary within thirty days of the decision.

Register.

**27.** (1) The Chief Inspector of Explosives shall maintain a Register of any licence or permits issued under this Act.

(2) The Register maintained under subsection (1), shall contain, in respect of each application —

- (a) a copy of —
  - (i) the application received;
  - (ii) the permit or licence issued under this Act; and
  - (iii) payment receipts where applicable; and

- (b) any other information that the Chief Inspector of Explosives may consider necessary.

Regulations.

**28.** (1) The Cabinet Secretary may make regulations to give effect to and for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary may make regulations in relation to the following matters —

- (a) the construction of explosives magazines and other danger buildings;
- (b) the conditions under which the manufacture of explosives may be carried on;
- (c) the storage of explosives, whether in explosives magazines or elsewhere;
- (d) the use of explosives;
- (e) the packing, transport, importation and exportation of explosives, and the making of special rules governing the packing and transport at individual places, and the landing and handling of explosives in ports and harbours;
- (f) the inquiry into the circumstances of explosions endangering or causing injury to persons or property or death, and for the reporting of all such explosions;
- (g) the prevention of trespass in or upon an explosives magazine.;
- (h) the tests to which explosives, or the raw materials from which explosives are manufactured, are liable to be submitted;
- (i) the manner in which appeals under section 22 shall be notified and conducted;
- (j) the statistics or records which manufacturers and users of explosives may be called upon to supply;
- (k) the fees payable for licences or permits, and any renewals or duplicates or variations thereof;
- (l) the protection of life and property; and
- (m) any other matter for the better carrying into effect of the provisions of this Act.

(2) The regulations may provide penalties for the contravention thereof or failure to comply therewith not exceeding in any case a fine not exceeding twenty thousand shillings or, in default of payment, imprisonment for a term not exceeding two years, and the rules may further provide that the explosive, if any, in respect of which the contravention or non-compliance has taken place may be forfeited.

Expiry of licences and permits.

**29.** (1) Every licence or permit issued under this Act shall expire on the 31<sup>st</sup> December in the year of issue.

(2) Notwithstanding subsection (1), a permit may be issued for a period of less than one year.

Repeal of Cap 115.           **30.** The Explosives Act is repealed.

**PART VII—TRANSITIONAL PROVISIONS**

Preservation of  
permits and  
licence.

**31.** (1) Any register kept, permit, license or authority issued or granted, notice or information given, return made, or other thing done under the repealed Act which immediately before the commencement of this Act was in force or effect, shall continue in force and have effect as if kept, effected, issued, given, made or done under the corresponding provision of this Act.

(2) Any form used and any requirement as to the particulars to be entered in any form used for the purposes of the repealed Act which was in force immediately before the date of commencement of this Act shall continue in force and have effect as though prescribed under this Act until forms or particulars are so prescribed.

Inspectors.

**32.** Any person who is an inspector immediately before the commencement of this Act shall be deemed to be an inspector under this Act.

**SCHEDULEs.2**

**AUTHORIZED EXPLOSIVES**

The following items are declared to be explosives under this Act—

1. Gelatinous explosives (such as blasting gelatin, gelignite, gelatin dynamite, etc.).
2. Non-gelatinous explosives (such as dynamite, ligdyn, farmers' dynamite, etc.).
3. Nitro-cotton.
4. Prilled Ammonium Nitrate
5. Cast Boosters
6. Detonators.
7. Non- detonating cartridge.
8. Danolite and instantaneous detonating fuse.
9. Pentaerythritol Tetranitrate.
10. Chlorate mixture.
11. Safety fuse.
12. Igniter cord.
13. Fuse Igniters.
14. Shaped Charges.
15. Sporting powder.
16. Percussion caps.
17. Fireworks of various kinds.
18. Distress Signals
19. Smoke Signals
20. Rockets Line-Throwing.