

CHAPTER 45
THE EXPLOSIVES ACT
[PRINCIPAL LEGISLATION]
ARRANGEMENT OF SECTIONS

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CHAPTER 45

THE EXPLOSIVES ACT

An Act to make provisions for the control of the manufacture, import, export, purchase, sale, possession and use of explosives, and for related matters.

[16th November, 1964]

[GN. No. 651 of 1964]

Acts Nos.
56 of 1963
9 of 2002
4 of 2004

PART I

PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Explosives Act.

Interpretation
Act No.
9 of 2002 Sch.

2.-(1) In this Act, unless the context otherwise requires-
“boat” includes any water-borne vessel other than a ferry;
“Commissioner” means the Commissioner for Minerals;
“explosives” means-

- (a) nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, azide of lead components improvised for explosives and other substance, whether similar to the foregoing or not, used or manufactured with a view to produce a practical effect by explosion and an adaptation or preparation of an explosive as above defined, but does not include liquid oxygen, gun powder, fire-signals, fire-works, rockets, percussion caps and small-arms ammunition;
- (b) detonators, detonating fuses, detonating relays, safety fuse, ignite cords and fuse ignite sticks; and
- (c) any substance, whether herein before mentioned or not, which the Minister may, by notice in the *Gazette*, declare to be an explosive for purposes of this Act;

“inspector” means an inspector of explosives appointed under section 4 and includes the Commissioner;

“magazine” means a building used or to be used as a magazine for the storage of explosives and licensed under section 32;

“manufacture” includes the process of dividing up into its component parts or otherwise breaking up or unmaking of any explosive or remaking, altering or repairing any explosive;

“Minister” means the Minister responsible for matters relating to mines and mining;

“owner” in relation to explosives, includes a person who acquires explosives on consignment from an importer either for his own use or for sale on behalf of importer;

“Port Management” means the management as defined in regulation 2 of the East African Harbours Regulations, 1962;

“prescribed” means prescribed by regulations made under this Act;

“Railway administration” means the Tanzania Railways Corporation;

“storage box” means a box used or to be used as a storage box for explosives; and

“store” means a building, structure or excavation used or to be used as a store for explosives and licensed under section 34.

(2) Where a substance is both an explosive, within the meaning ascribed to that word in this Act, and ammunition, within the meaning ascribed to that word in the Firearms and Ammunition Control Act, the Minister may, by order published in the *Gazette*, declare the substance either to be an explosive or ammunition and where the Minister makes the declaration that a substance is an explosive and not ammunition, it shall be deemed not to be ammunition within the meaning of that Act, or when he makes a declaration that a substance is ammunition and not an explosive, it shall be deemed not to be an explosive within the meaning of this Act.

E.A.H.C.
1952
Subsidiary
p. 32

Cap. 223

Prohibition on possession of certain explosives
Act No. 9 of 2002 Sch.

3.-(1) Notwithstanding any other provisions of this Act, a person shall not import, manufacture, possess, acquire or dispose of, sell, convey, deal or traffic in any explosive substance unless that substance has been approved by the Commissioner for use in Mainland Tanzania.

(2) A person who contravenes or fails to comply with the provisions of subsection (1) commits an offence and on conviction shall be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years but not exceeding seven years, or to both.

Appointment of inspectors

4. The Minister may appoint any public officer to be an inspector of explosives either for purposes of this Act or sections of this Act as he may specify.

Delegation of powers by Commissioner

5. The Commissioner may delegate any of the powers conferred upon him by this Act to any inspector appointed for purposes of this Act.

Person shall not deal in explosives except in accordance with this Act

6.-(1) A person shall not manufacture, import, export, buy or otherwise acquire, sell or otherwise dispose of, be in possession of or use any explosive except in accordance with the provisions of this Act.

(2) The provisions of this Act shall not apply to a member of the military forces of Tanzania acting in the course of his duties as a member of the forces.

PART II

MANUFACTURE OF EXPLOSIVES

Manufacture of explosives prohibited except under licence or permit
Act No. 9 of 2002 Sch.

7.-(1) A person shall not manufacture explosives unless he is the holder of and complies with the conditions of a valid licence granted under section 8 or a valid permit issued under section 9:

Provided that, the Minister shall not grant a licence under this section, unless he has first consulted the Minister responsible for Home Affairs.

(2) A person who contravenes the provisions of subsection (1) commits an offence and on conviction shall be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years but not exceeding seven years, or to both.

Licence to
manufacture
explosives
Act No.
9 of 2002 Sch.

8.—(1) The Minister may, on application being made in a form as may be prescribed and on payment of a fee, grant to any person a licence to manufacture explosives:

Provided that, the Minister shall not grant a licence under this section, unless he has first consulted the Minister responsible for Home Affairs.

(2) A licence granted under subsection (1), subject to the provisions of section 53, shall remain in force for a period and subject to conditions as may be specified therein.

Permit to
manufacture
explosives for
experimental
purposes
Act No.
9 of 2002 Sch.

9.—(1) The Commissioner may, on application being made therefor in a form as may be prescribed and on payment of a fee as may be prescribed, issue to any person a permit to manufacture and use explosives for the purpose of chemical experiment or trial or blasting operations to be conducted by a person:

Provided that, the Commissioner shall not grant a permit under this section unless he has first consulted the Director of Criminal Investigations.

(2) A permit issued under subsection (1), shall be for a period and subject to conditions as may be specified therein.

PART III

GENERAL RESPONSIBILITIES FOR THE CARE AND SECURITY OF EXPLOSIVES

Appointment
of persons to
be in-charge of
explosives

10.—(1) Where an explosives are not-

- (a) in the immediate charge of the owner thereof;
- (b) stored in accordance with the provisions of this Act in a magazine or store;

- (c) in the custody of the railway administration; or
- (d) in the custody of a person declared by section 39(1) to be in charge of the explosives,

the owner thereof shall, by writing under his hand, appoint and retain a responsible person to have charge of the explosives.

(2) Where under subsection (1), an owner appoints a person to have charge of any explosives, he shall give him written instructions not inconsistent with the provisions of this Act and in a language which he is able to read, explaining the nature and extent of his duties.

(3) A person appointed under subsection (1) to have charge of explosives shall produce his written appointment for inspection on demand being made therefor by an inspector, an administrative officer or a police officer not below the rank of inspector.

(4) The owner of a magazine or store where the magazine or store is not in his immediate charge, shall appoint a responsible person to have charge thereof and give him written instructions in accordance with the provisions of subsection (2).

Persons in charge
of explosives

11.—(1) Save where under the provisions of this Act, explosives are declared to be in or under the charge of other person, for purposes of this Act, the person in charge of an explosives shall be—

- (a) where the explosives are stored in a magazine or store, the person in charge of the magazine or store;
- (b) where the explosives are in the custody of the railway administration, the person appointed by that administration to have for the time being charge of the explosives;
- (c) in any other case, the person appointed under the provision of subsection (1) of section 10 to have charge of the explosives, or in default of or upon the termination of any appointment, the owner of the explosives.

(2) In addition to the persons declared in subsection (1) and elsewhere in this Act to be the person in charge of explosives, a person who for the time being has possession or custody of any explosives shall be deemed to be the person in charge of those explosives.

(3) It shall be the duty of the person in charge of explosives to ensure that, the provisions of this Act are observed.

(4) For the purpose of this section, where the owner of explosives is the person in charge of explosives and the owner is a body corporate, the directors and the chief officer of the body corporate in Mainland Tanzania shall be deemed to be the persons or person, as the case may be, in charge of the explosives in addition to the body corporate.

General
responsibility for
care of explosives

12.—(1) A person in charge of explosives or engaged in the handling, storage, transport, guarding or use of explosives, and the occupier and person in charge of a factory, mine or other place where explosives are stored shall take necessary precautions for the prevention of accident by fire or explosion and preventing unauthorised persons having access thereto or obtaining possession thereof, and abstain from any act likely to cause accident, fire or explosion.

(2) A person shall, so far as he is able, prevent any other person from doing any act likely to cause accident, fire or explosion.

(3) A person who contravenes or fails to comply with the provisions of subsection (1) or (2) commits an offence.

(4) In any proceedings under subsection (3) against any person who is, or was at the material time, the person in charge of explosives or the occupier or person in charge of a factory, mine or other place where explosives are, or were at the material time, stored, the burden of proof that, necessary precautions in respect of the explosives were taken to prevent accident, fire and explosion or to prevent unauthorised persons having access thereto or obtaining possession thereof shall lie on that person.

(5) For the purpose of any proceedings under subsection (3), where explosives are lost or stolen, it shall be presumed, until the contrary is proved that, an unauthorised person has obtained possession thereof.

Prohibition of dangerous acts, smoking, etc.
Act No. 9 of 2002 Sch.

13. A person who, while in the vicinity of any explosives-

- (a) smokes or has in his possession, other than for the purpose of blasting operations, any matches, detonators or other articles likely to cause accident by fire or explosion; or
- (b) does any act which he knows or has reason to believe is likely to cause accident by fire or explosion,

commits an offence and on conviction shall be liable to a fine of not less than five million shillings or to imprisonment for a term of not less than three years but not exceeding seven years, or to both.

PART IV IMPORT OF EXPLOSIVES

Importation without permit
Act No. 9 of 2002 Sch.

14.-(1) A person shall not-

- (a) import any explosives unless he has first applied for in the prescribed form and obtained from the Commissioner an import permit in respect of the explosives; or
- (b) unload any explosives from any aircraft, boat, train or vehicle unless the importer of the explosives has, prior to unloading, applied for in the prescribed form and obtained from the Commissioner an import permit in respect of the explosives:

Provided that, the Commissioner shall not issue a permit under this subsection unless he has first consulted the Director of Criminal Investigations.

(2) A person who contravenes or fails to comply with provisions of subsection (1) or who contravenes or fails to comply with the conditions of any permit issued under subsection (1) commits an offence.

Import permits **15.** An import permit shall be in a form as may be prescribed and-

- (a) state the quantity and nature of the explosives to be imported and the place at which they shall be imported;
- (b) authorised the conveyance of the explosives to their destination upon conditions as to route and method of conveyance as may be specified in the permit;
- (c) indicate the nature of the premises where the explosives are to be stored upon arrival at their destination, and may contain other conditions as the Commissioner consider desirable in the interests of safety and security.

General authority to import
Acts Nos.
9 of 2002 Sch.
4 of 2004 Sch.

16.-(1) The Commissioner may, where he thinks fit, issue to the owner of a magazine or store on application being made in the prescribed form an import permit in the form of a general authority to import explosives and convey them to the magazine or store.

(2) An import permit issued under subsection (1) shall be in a form as may be prescribed and subject to the provisions of section 53, expire on the thirty-first day of December next following the date of issue.

(3) An import permit issued under subsection (1) may include permission to sell or otherwise dispose of the explosives in accordance with the provisions of this Act and the conditions of the permit.

(4) The holder of any import permit issued under subsection (1) shall-

- (a) notify an inspector of intended import of any explosives;
- (b) at the end of each month, render the returns of his dealing with explosives; and
- (c) carry out written directions as may be given by an inspector with regard to-
 - (i) the route and method of conveyance of any explosives imported;
 - (ii) any other matter which in the opinion of an inspector, concerns the safety or security of explosives imported under the permit.

(5) The Commissioner, before issuing a permit under this section shall, consult the Director of Criminal Investigations.

(6) A person who contravenes or fails to comply with the provisions of subsection (4) commits an offence.

Notice of
intended import

17. A person who intends to import explosives by sea shall notify the port management at least twenty-four hours before the expected arrival of the ship carrying the explosives in the harbour and furnish the particulars of the explosives as may be prescribed or as the port management may require.

Responsibility of
port management

18.—(1) The port management shall appoint a responsible person to be in charge of explosives when they are unloaded from a ship until they are securely locked in a railway wagon or until they are delivered to the person in charge of a magazine, store or to a person appointed to have charge of the explosives under section 10(1) whichever event first occurs.

(2) The port management shall ensure that, the person appointed under subsection (1) to be in charge of explosives is conversant with the provisions of this Act and any regulations made thereunder and with any conditions of the import permit relating to the explosives and any lawful directions issued by any person with regard to the explosives.

Form of packing
to be approved

19.—(1) A person shall not import any explosives unless they are packed in a manner and enclosed in a container approved by the Commissioner.

(2) A person who contravenes or fails to comply with the provisions of subsection (1) commits an offence.

PART V

TRANSPORT OF EXPLOSIVES

Transport of
explosives
prohibited except
under permit

20.—(1) A person other than the railway administration shall not transport and deliver for transportation any explosives except in accordance with a permit issued by an inspector.

(2) Subsection (1) shall not apply to the transportation of explosives within the area of a mine or other workings from a magazine, store or storage box to a place where they are to be used.

(3) A permit issued under subsection (1) shall be in a form as may be prescribed and subject to conditions as may be specified therein.

(4) A person who contravenes or fails to comply with the provisions of subsection (1) commits an offence.

General
provisions
relating to care
of explosives in
transit

21.—(1) When explosives are being transported by boat, road, rail or other means, the person in charge of the explosives shall ensure that-

- (a) the explosives are securely and properly loaded and a person is not carried in the conveyance carrying the explosives except those persons necessary for the due and proper control thereof;
- (b) an unauthorised person is not at any time allowed access to the explosives or to the conveyance in which they are carried;
- (c) the explosives are effectually protected from accident by fire and, unless carried in a wholly enclosed conveyance, that they are completely covered with a tarpaulin or other spark resisting material; and
- (d) where any explosive escapes from the package in which it is contained, or is spilt, it is carefully collected and disposed of, and traces of it are removed from the conveyance in which the explosives are being carried.

(2) Detonators shall not be carried in the same conveyance as other explosives:

Provided that-

- (a) in this subsection “explosives” shall not include safety fuse; and
- (b) detonators in quantities of less than two thousand may be carried in the same conveyance as other explosives where the packages of detonators are packed in a

strong outer container and surrounded with sawdust, straw, shavings or similar material and are secured that, there is a space of not less than three inches between the packages of detonators and the outer container, and where the container is stored as far away from the other explosives as is reasonable practicable.

(3) A person who contravenes or fails to comply with the provisions of this section commits an offence.

(4) The Minister may, by order published in the *Gazette*, modify the provisions of paragraphs (a) and (b) of subsection (1) of this section in relation to the transport of explosives into or out of Mainland Tanzania, and where he modifies, provisions of this section shall have effect in respect of the transportation provided for in the order.

Conveyance of
explosives by boat

22.—(1) When explosives are being transported by boat, otherwise than when under the control or authority of the railway administration, the person in charge of the explosives shall comply with the provisions of section 21 and ensure that-

- (a) there is flown by day in the bow so as to be visible on sides from a red flag measuring at least two feet by two feet;
- (b) there is shown by night a red light in an elevated position above the deck so as to be clearly visible on sides from a distance of two hundred yards;
- (c) the boat does not go alongside any other boat and no other boat comes alongside it except for the purpose of shipping, unshipping or transshipping explosives;
- (d) relevant conditions contained in any import or other permit are complied with; and
- (e) directions given by an inspector with regard to the manning of the boat or otherwise are obeyed.

(2) A person shall not-

- (a) load into, carry in or unload from any boat any explosives between the hours of sunset and sunrise; or

(b) use any mechanically propelled boat for the carriage of explosives,
unless he is the holder of a written permit issued in that behalf by an inspector and complies with the conditions of the permit.

(3) A person who contravenes or fails to comply with the provisions of subsection (1) or (2) commits an offence.

Conveyance of
explosives by
road

23.—(1) Where explosives are in transit by road, the person in charge of the explosives shall comply with the provisions of section 21 and ensure that—

- (a) vehicle carrying explosives shall not remain stationary within one hundred yards of any building or in the vicinity of any town or village;
- (b) explosives between the hours of sunset and sunrise are not kept within one hundred yards of any highway or railway;
- (c) vehicle carrying explosives is not loaded beyond seventy-five percent of its authorised load;
- (d) explosives are not moved along a road between the hours of sunset and sunrise;
- (e) persons carrying explosives shall not approach within fifty yards of a railway except when crossing the same by a recognised path or road or when necessary for the purpose of carrying the explosives to or from a railway station;
- (f) there is affixed to every vehicle carrying explosives a red flag at least two feet by two feet visible from all directions; and
- (g) at resting places a guard is at all times kept over the explosives.

(2) A person who contravenes or fails to comply with the provisions of subsection (1) commits an offence.

PART VI

ACQUISITION, POSSESSION AND DISPOSAL OF EXPLOSIVES

Acquisition of
explosives
Act No.
9 of 2002 Sch.

24.—(1) A person shall not purchase or otherwise acquire explosives unless he is—

- (a) the holder of a valid licence issued by the Commissioner to purchase or acquire explosives;
- (b) the holder of a valid import permit issued under section 15 or 16 in respect of explosives; or
- (c) otherwise authorised to acquire the explosives under this Act.

(2) The Commissioner, before issuing a licence under subsection (1)(a), shall consult the Director of Criminal Investigations.

(3) A licence issued under paragraph (a) of subsection (1) shall be in a form and subject to conditions as may be prescribed.

(4) A person who contravenes or fails to comply with the provisions of subsection (1) commits an offence.

Possession of
explosives

25.—(1) A person shall not be in possession of any explosives save in accordance with the provisions of this Act.

(2) A person who is in possession of any explosives shall give to an inspector, informations as to the explosives and his dealings with them as the inspector may reasonably require.

(3) A person who contravenes or fails to comply with provisions of subsection (1) or (2) commits an offence.

Disposal of
explosives
Act No.
9 of 2002 Sch.

26.—(1) A person shall not sell or otherwise dispose of any explosives to any other person unless—

- (a) he is the holder of a valid permit to import and sell the explosives issued under section 16; or
- (b) he is the holder of a permit to sell or dispose of the explosives issued in writing by the Commissioner; and
- (c) the person who purchases or otherwise acquires the explosives is entitled so to do under section 24.

(2) The Commissioner, before issuing any permit under subsection (1)(b), shall consult the Director of Criminal Investigations and a permit shall be subject to conditions as may be specified therein.

(3) A person who contravenes or fails to comply with the provisions of subsection (1) commits an offence.

PART VII STORAGE OF EXPLOSIVES

(a) General Provisions

Explosives to
be stored in
accordance with
this Part

27.—(1) Explosives shall be stored only in accordance with the provisions of this Part.

(2) A person who contravenes or fails to comply with the provisions of subsection (1) commits an offence.

General
provisions
relating to storage
of explosives

28.—(1) Explosive, other than detonators, in quantities exceeding one thousand pounds in weight, shall be stored in a magazine.

(2) Explosives other than detonators in quantities exceeding one hundred pounds in weight but not exceeding one thousand pounds in weight, where not stored in a magazine, shall be stored in a store.

(3) Explosives other than detonators in quantities not exceeding one hundred pounds in weight, where not stored in a magazine or store, shall be stored in a storage box kept in a place approved by an inspector.

(4) Detonators exceeding four hundred thousand in number shall be stored in a magazine.

(5) Detonators exceeding ten thousand but not exceeding four hundred thousand in number shall, where not stored in a magazine, be stored in a store.

(6) Detonators not exceeding ten thousand in number shall, if not stored in a magazine or store, be stored in a storage box kept in a place approved by an inspector.

(7) A detonator shall not be stored in a magazine or store which contains other explosives.

(8) Notwithstanding the foregoing provisions of this section, safety fuse, fuse ignite cord and any other type of fuse ignite which contains only combustible compounds may be stored in a magazine or store which contains other explosives:

Provided that-

- (a) detonating fuse shall not be stored with detonators; and
- (b) detonating relays may be stored with detonators but shall not be stored with any other explosive.

(9) A place where explosives are stored shall be indicated by means of the word "*Hatari*" and underneath the words "*Baruti-Explosives*" or "*Fataki-Detonators*", as the case may be, displayed in a manner as to be clearly visible to any person approaching the place.

(10) The door of a building, structure or excavation where explosives are stored and a storage box when not in use for the issue of explosives or other lawful purpose shall be securely fastened under lock and key and the key shall be in the possession of the person in charge of the explosives.

Reports to be
made of theft, etc.

29.-(1) Where a place where explosives are stored is broken into, damaged by fire or otherwise, or where any explosives are lost or stolen, a report shall forthwith be made by the person in charge of the explosives to the nearest police officer or administrative officer and an inspector.

(2) A person who fails to comply with the provisions of subsection (1) commits an offence.

Storage
underground

30. Explosives exceeding the estimated requirements for twenty-four hours shall not be stored in underground mine workings, other than in an underground store, except with the permission of an inspector and subject to conditions as he may impose.

(b) Magazines

Permit for
erection of
magazine

31.—(1) A person shall not construct a magazine unless he is the holder of a written permit issued in that behalf by the Commissioner.

(2) An application for a permit under subsection (1) shall be made to the Commissioner in a form as may be prescribed and accompanied by—

- (a) plans and specifications of the proposed magazine, in triplicate;
- (b) a detailed map to a scale of not less than 1:1,000 of the area within a radius of the proposed magazine as may be prescribed or as the Commissioner may require; and
- (c) additional information as to the rights of the applicant over the site on which the proposed magazine is intended to be built, or otherwise, as the Commissioner may require.

(3) In considering whether to issue a permit under subsection (1), the Commissioner shall have due regard to any rights which persons other than the applicant may have over the land in the vicinity of the proposed magazine.

Issue of magazine
licence

32.—(1) A proposed magazine when constructed shall be inspected by an inspector.

(2) Where on inspection under subsection (1), the proposed magazine is considered to be suitable for the storage of explosives, a magazine licence may, on payment of the prescribed fee, be issued by the Commissioner to the owner of the magazine.

(3) A magazine licence shall be in a form as may be prescribed, have attached thereto a copy of the plans and specifications of the magazine, and state the quantity and nature of the explosives which may be stored and the manner in which they shall be stored in the magazine.

(4) Pending inspection under subsection (1), the Commissioner may, in writing, permit subject to conditions as he may impose, explosives to be stored therein.

(5) A magazine licence shall remain in force until it is revoked or surrendered.

(c) Stores

Application for
store licence

33. Application for the licensing of any building, structure or excavation as an explosives store shall be made to an inspector and accompanied by plans and specifications of the building, structure or excavation, in triplicate, and other information as the inspector may require.

Issue of store
licence

34.—(1) Where the inspector is satisfied that the building, structure or excavation in respect of which application is made under section 33 is suitable for use as an explosives store, he may, on payment of the prescribed fee, issue a licence authorising the storage of explosives therein.

(2) The inspector may, if he thinks fit, before issuing a licence under subsection (1), inspect the building, structure or excavation in respect of which the application is made.

(3) A licence issued under subsection (1) shall—

- (a) be in a form as may be prescribed;
- (b) have attached thereto the plans and specifications of the store; and
- (c) state the quantity and nature of the explosive which may be stored and the manner in which shall be stored.

(4) A licence issued under subsection (1) shall remain in force until is revoked or surrendered.

(d) Storage Boxes

Storage boxes to
be of approved
pattern, etc.

35.—(1) A storage box shall be constructed in accordance with the standards and pattern as may be prescribed and approved by the Commissioner.

(2) A storage box containing explosives shall be kept at a place approved by an inspector and a storage box shall not be kept or placed within six feet from any other such box.

(3) Detonators shall not be stored in the same storage box as other explosives.

(4) Notwithstanding the foregoing provision of this section, safety fuse, fuse ignite cord and any other type of fuse ignite which contains only combustible compounds may be stored in a storage box which contains other explosives:

Provided that-

- (a) detonating fuse shall not be stored with detonators; and
- (b) detonating relays may be stored with detonators but shall not be stored with any other explosive.

Storage
underground

36. Where any storage box containing explosive are stored in underground mine workings the box shall -

- (a) be kept in a dry and secluded place, which shall be capable of being locked at a safe distance from any place where work is carried on;
- (b) not contain more than two hundred detonators; and
- (c) be kept locked and the person in charge of the explosives shall keep the keys thereto and unlock them only when he places explosives therein or removes explosives therefrom.

Register of
transactions to
be kept

37.-(1) In a magazine or store where explosives are stored, there shall be kept a register in which the person in charge of the explosives shall forthwith enter details of a receipt and issue of explosives as it occurs.

(2) A second register shall be maintained by the person in charge of explosives at some convenient place other than the magazine or store and enter therein daily, details mentioned in the first register.

(3) The registers mentioned in subsections (1) and (2) shall be maintained to show the quantity and description of explosives received and issued, the date and time of each receipt and issue, the person to whom the explosives were issued and the balance of description of explosives remaining in stock at the end of each day.

(4) A person who contravenes or fails to comply with the provisions of subsection (1), (2) or (3) commits an offence.

(5) An inspector may by notice in writing addressed to the person in charge of explosives apply the provisions of subsections (1), (2) and (3) to any place, other than a magazine or store, at which explosives are kept and thereupon, the person shall keep registers in accordance with the provisions of those subsections.

PART VIII

USE OF EXPLOSIVES

Use of explosives **38.**—(1) A person shall not use any explosives otherwise than in accordance with the provisions of this Part and with any conditions contained in any permit, licence or authorisation issued in respect of the explosives.

(2) A person who contravenes or fails to comply with the provisions of subsection (1) commits an offence.

Person in charge of explosives issued for use **39.**—(1) Explosive issued for use from a magazine, store or storage box shall be under the immediate charge of the holder of a blasting certificate issued under the provisions of section 42 from the time they are issued until they are used.

(2) Explosives may be conveyed from a magazine, store or storage box to the place where they are to be used by a responsible person holding a special or general authority in writing in that behalf issued by the owner of the magazine, store or storage box or by a mine or works manager, and the person shall be in charge of the explosives.

(3) Explosives issued for use shall be placed, kept and carried in locked wooden boxes or other containers as may be approved by the Commissioner until required for use.

Blasting operations to be performed by holder of certificate **40.**—(1) A person shall not supervise, conduct or perform any blasting operations, prepare or fire any charge or primer cartridge, charge any hole with explosives, or deal with any misfire unless he is the holder of a blasting certificate issued under the provisions of section 42.

(2) A holder of the certificate mentioned in subsection (1) may be assisted in his operations by persons acting under his direct supervision and control and the holder of the certificate when assisted shall ensure that, the person observes the provisions of this Act and any regulations made thereunder.

Blasting
operations to
be in charge
of holder of
certificate

41.—(1) At a place where blasting operations are being carried on, there shall be an experienced person in charge who shall be the holder of a blasting certificate issued under the provisions of section 42.

(2) Where the person in charge of the blasting operations does not fire the charges, he shall properly and efficiently supervise and co-ordinate the work of the person who is to do so as to provide for the safety of persons in the vicinity.

Blasting
certificates

42.—(1) An application for the issue or renewal of a blasting certificate shall be made to an inspector in a form and accompanied by a fee as may be prescribed.

(2) A blasting certificate shall be in a form as may be prescribed and specify the nature of the work upon which the holder may engage.

(3) Notwithstanding subsection (2), an inspector may, on application being made to him and without payment of any fee, vary the nature of the work authorised by the certificate.

(4) A blasting certificate shall not be issued or renewed by an inspector unless he is satisfied by personal examination that, the applicant is competent to conduct blasting operations.

(5) An inspector may, where personal examination of the applicant is impracticable, issue a blasting certificate upon receipt of a certificate of competence made in respect of the applicant and signed by a mine manager or other responsible person who is the holder of a blasting certificate.

(6) Subject to the provisions of subsection (7) of this section and section 53, a blasting certificate shall remain in force for a period of five years from the date of issue and subject to the provisions of subsection (4), may be renewed for a further period of five years.

(7) A blasting certificate may be suspended by an inspector for a period as he may determine where he is satisfied that, the holder thereof has ceased to be competent to conduct blasting operations.

(8) The holder of blasting certificate which is suspended under subsection (7) may, within thirty days of the suspension, appeal to the Commissioner whose decision shall be final.

(9) A holder of a blasting certificate shall immediately upon receipt thereof sign the same with his usual signature.

(10) An issue, renewal or suspension of a blasting certificate shall be reported to the Commissioner.

Persons
responsible
for observing
provisions of
this Part

43. An employer of labour, manager, foreman and other person in charge of labour shall take reasonable steps to ensure that, the provisions of this Part are observed and a holder of a blasting certificate possesses a copy of this Act and any regulations made thereunder in English or Kiswahili.

PART IX ACCIDENTS

Procedure in case
of accident

44.—(1) Where an accidental explosion causing injury or death to any person occurs in connection with the manufacture, storage, use or transport of explosives, the person in charge of the explosives shall cause a written report of the accident to be sent with the least possible delay to the nearest inspector.

(2) The report made under subsection (1) shall be in addition to any report which may be required under the provisions of the Accidents and Occupational Diseases (Notification) Act.

(3) A person who fails to comply with the provisions of subsection (1) commits an offence.

Cap. 330

Inquiry into cause
of accident
Act No.
9 of 2002 Sch.

45.—(1) On receiving a report made under section 44, an inspector shall as soon as possible, hold an inquiry into the cause of the accident.

(2) An inspector holding an inquiry under the provisions of this section shall have the powers of a magistrate to summon witnesses, call for the production of books and documents and examine witnesses on oath.

(3) A person summoned to attend or to produce books or documents at any inquiry held under the provisions of this section who refuses or wilfully neglects so to do or who being a witness at the inquiry refuses to answer any question put to him by or with the concurrence of the inspector holding the inquiry, commits an offence and on conviction shall be liable to a fine of not less than one hundred thousand shillings.

(4) Where a witness at the inquiry refuses to answer any question on the ground that, to do so may tend to incriminate him, he shall not be required to answer the question nor shall he commit an offence for refusing to answer.

(5) A witness attending an inquiry held under the provisions of this section at the request of or upon summons by the inspector holding the inquiry shall, subject to any order made by the inspector, be entitled to expenses on the same scale as if he had been summoned to attend a criminal trial in the High Court.

PART X

POWERS OF INSPECTORS AND POLICE OFFICERS

Powers of
inspectors

46.—(1) An inspector may, for the purpose of ascertaining whether the provisions of this Act and any regulations made thereunder are being observed—

- (a) enter at any hour of the day or night, any premises or place where explosives are manufactured, stored, kept or used;
- (b) take samples of explosives or any substance resembling explosives in the possession of any person;
- (c) require the owner or occupier of any magazine, store or any place where explosives are kept or the person in charge of any explosives to give information relating to the magazine, store or explosives as he may reasonably require; and

(d) stop and detain for examination any vehicle or boat which he has reasonable grounds to believe that being used for the conveyance of explosives.

(2) An inspector may at any hour of the day or night enter any premises or place where he has reasonable grounds for believing that, any offence under this Act or any regulations made thereunder is being committed therein.

(3) An inspector may, at reasonable times, inspect and take copies of or extracts from any register required to be kept under the provisions of section 37.

(4) An inspector may seize any explosives which are stored or found in circumstances dangerous to public safety or which are insufficiently safeguarded and may detain any explosives until he is satisfied that, arrangements have been made to store the explosives in accordance with the provisions of this Act and any regulations made thereunder and the person in charge of explosives shall adhere to the arrangements.

Powers of police officers

47.—(1) A police officer of the rank of inspector or above may exercise the powers conferred upon an inspector by section 46(1)(a), (c) and (d) and (2), (3) and (4).

(2) A police officer of the rank of inspector or above may, by writing under his hand, issue orders for the detention, removal or safeguarding of any explosives as he may consider necessary for the safety or security of the explosives.

Inspector may issue orders

48.—(1) An inspector may issue orders in writing to the owner or any person in charge of explosives requiring him to do any act in relation to explosives which the inspector considers necessary in the interests of public safety or the security of the explosives, and the orders shall, subject to the provisions of subsection (2) be carried out forthwith.

(2) Where a person to whom an order is issued under subsection (1) objects in writing to the order, the matter shall be referred by the inspector to the Commissioner who may

confirm, vary or cancel the order, but pending the decision of the Commissioner the order shall be carried out unless the inspector, in his discretion, and with due regard to the public safety and the security of the explosives, by writing under his hand, suspends the order.

PART XI

MISCELLANEOUS PROVISIONS

Notice to be given when works containing explosives are closed down

49. When any mine or other works where explosives are kept is closed down either temporarily or permanently, notice shall be given to an inspector by the person in charge of the explosives and by the person in charge of the mine or other works and, unless the explosives are removed and stored elsewhere, they shall be disposed of in accordance with the directions as the inspector may give.

Offences

50. A person who-

- (a) hides or abandons any explosives;
- (b) fails to comply with the conditions contained in any licence, permit or authorisation issued under the provisions of this Act;
- (c) hinders or obstructs any inspector or police officer in the exercise of the powers and duties conferred or imposed by this Act; or
- (d) refuses or willfully neglects to obey any order issued by an inspector or a police officer under this Act,

commits an offence.

General penalty
Act No.
9 of 2002 Sch.

51. A person who commits an offence contrary to the provisions of this Act for which no penalty is specifically provided, shall, on conviction, be liable to a fine of not less than two million shillings or to imprisonment for a term of not less than three years but not exceeding seven years or to both.

Onus of proof **52.** In any proceedings under this Act against any person for the unlawful possession or use of explosives, the onus shall be upon the person to show that, the possession or use was lawful.

Revocation of permits, etc. **53.**—(1) The Commissioner may revoke any certificate, licence, authorisation or permit granted or issued under this Act—

- (a) where the holder thereof is convicted of an offence contrary to the provisions of this Act; or
- (b) for any other good and sufficient reason.

(2) A person whose certificate, licence, authorisation or permit is revoked under subsection (1)(b) may appeal against the revocation to the Minister whose decision shall be final.

Licences, permits, etc., not transferable **54.**—(1) A certificate, licence, permit or authorisation granted or issued under this Act shall not be transferable.

(2) Where the ownership of any magazine or store is transferred from the holder of the licence to another person, the Commissioner may endorse the licence accordingly and authorise it to be transferred to the other person.

Regulations **55.**—(1) The Minister may make regulations for the better carrying out of the purposes of this Act and, without prejudice to the generality of the foregoing, may make regulations concerning—

- (a) the forms to be used for applications, certificates, licenses, permits and other documents issued or made;
- (b) the fees to be paid for anything to be done;
- (c) the procedure to be followed and the information to be given in the case of any application;
- (d) the classification of different types of explosives;
- (e) the packing and transport of explosives;
- (f) the conditions applicable to the manufacture of explosives under licence or permit;
- (g) the construction and licensing of magazines and stores and the specifications to which they are to be constructed;

- (h) the report of an inquiry into accidents;
 - (i) the payment of compensation to persons injured by fire or accident caused by explosives;
 - (j) the import, export, handling, conveyance, possession, use, storage and destruction of explosives;
 - (k) the conditions to be observed by person engaged in blasting operations;
 - (l) the returns to be made by persons importing, dealing in or using explosives;
 - (m) the making of further and better provisions as he may consider necessary in the interests of public safety, the safeguarding of explosives, the protection of life and property and the avoidance of accidents.
- (2) Regulations made under this section may fix penalties for the breach of regulations not exceeding the penalties contained in section 51.
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