

Malawi

Explosives Act

Chapter 14:09

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Explosives Act

Chapter 14:09

Assented to on 29 December 1966

Commenced on 1 June 1968

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[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for the regulation and control of the acquisition, manufacture, sale and use of explosives and for matters incidental thereto and connected therewith

1. Short title

This Act may be cited as the Explosives Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**acquire**” includes hire, purchase and accept as an inheritance, gift, loan or on approval;

“**Chief Inspector**” means Chief Inspector of Explosives appointed under this Act;

“**explosive**” means—

- (a) nitroglycerin, dynamite, gun-cotton, blasting powder, gunpowder, and any other substance or mixture capable of being used for the purpose of producing an explosion;
- (b) any detonating fuse, igniter cord, safety fuse, fuse igniter, detonator or percussion cap and every adaptation or preparation of any explosive;
- (c) any other substance which the Minister may from time to time, by notice published in the *Gazette*, declare to be an explosive;

“**Inspector**” means the Chief Inspector of Explosives and an Inspector of Explosives appointed under this Act;

“**manufacture**” includes to make and divide any explosive from or into its component parts by any process, to convert an explosive into an explosive of another kind, and to alter or fit for use any explosive.

3. Application

Nothing in this Act shall apply to—

- (a) the import, storage, acquisition or use of any explosive by the armed forces of Malawi, the Police or any other armed force constituted by or under any written law;
- (b) any ammunition for which a licence to possess or deal is held under the Firearms Act;

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- (c) the possession or conveyance of any explosive by an Inspector or any other duly authorized person, for the purposes of this Act or any regulations made thereunder, provided that the quantity is not more than is reasonably necessary for the purpose required, and that it is kept and conveyed with all due precaution;

- (d) any explosive or class of explosives which the Minister may, by notice published in the *Gazette*, exempt for such special purpose or purposes and in accordance with such conditions as shall be specified in such notice.

4. Appointment and duties of Inspectors

- (1) There may be appointed a Chief Inspector of Explosives and as many public officers to be Inspectors of Explosives as is deemed necessary.
- (2) It shall be the duty of the Chief Inspector of Explosives and Inspectors of Explosives to control the purchase, sale, dealing in, storage, use and disposal of explosives so as to minimize the danger of accidental explosion and damage to the public or to persons handling, storing or using explosives.
- (3) Every Inspector of Explosives shall, in the exercise of his powers and performance of his duties under this Act, be subject to any general or special directions of the Chief Inspector of Explosives.
- (4) The Chief Inspector of Explosives and every Inspector of Explosives shall in the exercise of every power and duty conferred upon them under any provision of this Act be at all times subject to the general or special directions of the Minister.

5. Prohibition on acquisition or possession of explosives without licence or permit

Except as may otherwise be provided under this Act, no person shall acquire or have in his possession or use any explosive unless he holds a valid licence or permit in respect thereof issued under this Act by the Chief Inspector, or by an Inspector authorized by him in writing in that behalf.

6. Type of licence and permit

- (1) The Chief Inspector or an Inspector authorized by him in writing in that behalf may, in relation to explosives issue—
 - (a) a storage licence;
 - (b) a dealer's licence;
 - (c) a permit to possess;
 - (d) a blasting licence,for such period and subject to such conditions as he may consider appropriate in the circumstances.
- (2) A storage licence shall authorize the holder thereof to store explosives in the premises described in the licence.
- (3) A dealer's licence shall authorize the holder thereof to purchase, sell and deal in explosives.
- (4) A permit to possess shall authorize the holder thereof to purchase and possess explosives.
- (5) a blasting licence shall authorize the holder thereof to use explosives for the purpose of blasting operations.

7. When storage licence may be issued

- (1) A person who desires to store explosives shall apply in the prescribed manner to the Chief Inspector specifying the premises where it is desired to store explosives and the purpose of such storage.
- (2) A storage licence shall not be issued unless satisfactory evidence is given that—
 - (a) the applicant genuinely requires to store explosives for the purpose of trade or use and holds or has applied for a dealer's licence or a permit to possess;

- (b) the premises where it is proposed to store explosives are suitably constructed for the purpose and are situated at a safe distance from any place where persons habitually live, work, congregate or pass.

8. When dealer's licence may be issued

- (1) A person who desires to deal in explosives shall apply in the prescribed manner to the Chief Inspector specifying his experience in the handling of explosives and the nature of the trade which he anticipates.
- (2) A dealer's licence shall not be issued unless satisfactory evidence is given that—
 - (a) there is a genuine need for a dealer in explosives in the area in which the applicant intends to operate;
 - (b) that the applicant is a suitable person to deal in explosives.

9. When permit to possess may be issued

- (1) A person who desires to possess explosives otherwise than as a dealer shall apply in the prescribed manner to the Chief Inspector specifying the purpose for which he desires to possess explosives.
- (2) A permit to possess shall not be issued unless satisfactory evidence is given that—
 - (a) the applicant genuinely requires explosives for a lawful and proper purpose;
 - (b) that the applicant or a person in his employment is sufficiently expert in the use of explosives.

10. When blasting licence may be issued

- (1) A person who desires to carry out blasting operations shall apply in the prescribed manner to the Chief Inspector specifying the nature of the operations which he proposes to carry out and the training or experience in the use of explosives which he possesses.
- (2) A blasting licence shall not be issued to any applicant unless he produces satisfactory evidence that he has adequate experience or training in the use of explosives and is a suitable person to hold a blasting permit.

11. Exemption of employees

A person who is employed by the holder of a licence or permit issued under section 7, 8, or 9 may have in his possession any explosive to which his employer's licence or permit relates for the purpose of carrying out his duties in accordance with the terms and conditions of the licence or permit.

12. Exemption of carriers

A person carrying on the business of a carrier or a servant of a carrier may have in his possession any explosive for the purpose of conveying such explosive to the holder of the licence or permit issued under section 7, 8, or 9.

13. Penalty for acquisition or possession of explosives without licence or permit

Subject to sections 11 and 12, a person who acquires or has in his possession or under his control or who uses any explosive otherwise than in accordance with the terms and conditions of a licence or permit to do so issued under this Act, shall be liable to a fine of K50,000 and to imprisonment for one year.

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14. Burden of proof

- (1) In any proceedings under this Act an accused person shall be presumed not to be the holder of any licence or permit unless he proves the contrary.
- (2) The burden of proving that this Act does not apply to any substance capable of producing an explosion shall be on the person making such an allegation.

15. Manufacture of explosives

- (1) No person shall manufacture any explosive unless he is the holder of a licence to manufacture granted by the Chief Inspector or otherwise than in accordance with the terms and conditions of such licence:

Provided that a licence to manufacture shall not be necessary where the only process of manufacture is the mixing of carbonaceous or metallic diluents with ammonium nitrate, when such mixing is carried out on the site where blasting operations are to take place.

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- (2) A person who contravenes any of the provisions of subsection (1) shall be liable to a fine of K200,000 and to imprisonment for five years.

[8 of 2002]

16. Destruction of explosives

- (1) An Inspector may declare any explosive to be unsafe and may destroy or cause to be destroyed such explosive, or may order the destruction of such explosive by the owner or by the person having custody or control thereof or by the person in occupation of the place where such explosive may be.

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- (2) A declaration that an explosive is unsafe may be made whenever an Inspector considers that there is a danger of accident in relation thereto.
- (3) No claim whatsoever shall lie against the Government or an Inspector in respect of anything done as a result of an order given under subsection (1).
- (4) A person who fails, within a reasonable time, to comply with an order given to him under subsection (1) shall be liable to a fine of K50,000 and to imprisonment for one year.

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17. Precaution against and reporting loss of explosives

- (1) Every person having in his possession or under his control any explosive, shall take all reasonable precautions to ensure that such explosive is not lost, stolen, or at any time available to any person not lawfully entitled to possess the same, and if any loss, theft or disappearance of any such explosive occurs shall forthwith report the same to the officer in charge of the nearest police station.
- (2) Any person who fails to comply with any of the provisions of subsection (1) shall be liable to a fine of K50,000, and to imprisonment for one year.

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

18. Search of persons, vehicles, vessels and premises

- (1) In this section “officer” includes an administrative officer, a police officer of or above the rank of police Inspector and an Inspector duly appointed under this Act.
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- (2) An officer may, without warrant, stop, search and detain any vehicle or vessel in or upon which there is reason to suspect that any explosive is being unlawfully conveyed and may also stop, search or cause to be searched, and detain any person who may be reasonably suspected of unlawfully having in his possession or unlawfully conveying in any manner any explosive.
- (3) An officer may, without warrant, enter, with or without permission and using force for the purpose if necessary, any place or premises in which he has reason to suspect that any explosive is being unlawfully stored, kept or manufactured and may search or cause to be searched such place or premises and any person found therein.
- (4) Where, as a result of any search made under this section, any explosive is found and no valid permit or licence is produced by any person in respect thereof the officer effecting the search may seize such explosive and shall thereupon dispose thereof in such manner as the Minister may prescribe.
- (5) Any person who wilfully obstructs or resists an officer in the lawful exercise of any power conferred upon such officer by this section shall be liable to a fine of K50,000 and to imprisonment for one year.
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19. Penalty for obstructing Inspector

Any person who wilfully obstructs or hinders an Inspector in the exercise of any of the powers or duties conferred or imposed upon him by this Act, or who disobeys any lawful order of an Inspector, or who, upon demand, fails to answer as well as he is able, any question lawfully put to him by an Inspector, or who gives false information to an Inspector, whether in answer to any such question or not, shall be liable to a fine of K50,000 and to imprisonment for one year.

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20. Revocation of permits and licences

- (1) Any permit or licence granted under this Act may be revoked by the Chief Inspector if the holder thereof fails to comply with any condition attached thereto or is convicted of an offence under this Act or any regulations made thereunder.
- (2) Where a permit or licence is revoked, the Chief Inspector 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 such notice, he shall be liable to a fine of K10,000:

Provided that where an appeal is brought against the revocation, this section 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.

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21. Appeal against refusal to grant a permit or licence or revocation thereof

An appeal against the refusal to grant a permit or licence or the revocation thereof shall lie in the prescribed manner to the Minister, whose decision shall be final and shall not be questioned in any court, but no appeal shall lie against the result of any test or examination which, in terms of any regulations made under this Act, any person may be required to undergo in order to obtain a licence or permit.

22. Penalties for endangering safety or causing loss of life

- (1) Any person who negligently causes an explosion whereby—
 - (a) property is endangered or damage to property is caused by such explosion shall be liable to a fine of K50,000 and to imprisonment for twelve months; and
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 - (b) the life of any person is endangered or injury to any person is caused by such explosion shall be liable to a fine of K500,000 and to imprisonment for five years.
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- (2) Any person who by a willful act or omission causes an explosion whereby life or property is endangered or whereby injury to any person or damage to property results shall be liable to imprisonment for a period of ten years.
- (3) Nothing in this section shall be construed as exempting any person from being charged and punished under any other written law in respect of any act or omission such as is described in this section.
- (4) For the purpose of this section “explosion” includes a fire caused by an explosion.

23. Power to make regulations

- (1) The Minister may make regulations for the better carrying into effect of the purposes and provisions of this Act, and in particular and without derogation from the generality of the foregoing, may make regulations for all or any of the following purposes—
 - (a) regulating the storage of explosives;
 - (b) regulating the sale of and any dealings in explosives;
 - (c) prohibiting or regulating the possession of explosives;
 - (d) regulating the use of explosives;
 - (e) prohibiting or regulating the manufacture of explosives;
 - (f) regulating the importation, exportation and transportation of explosives load;
 - (g) providing for the examination and inspection of explosives, the places in which they are stored, kept or used and any place at which any accident, of whatsoever nature, may be liable to be caused by an explosive;
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 - (h) requiring the reporting of accidents to persons, or damage to property, caused by an explosive;
 - (i) prescribing the fees to be paid for any licence or permit issued, or examination or inspection made under or in pursuance of this Act or of any regulations made under this Act;
 - (j) providing for the issue, suspension and cancellation of blasting licences;
 - (k) providing for the issue, suspension and cancellation of permits or licences to possess, manufacture, store or deal in explosives;
 - (l) prescribing the forms, books and records to be used or kept for the purposes of this Act;
 - (m) providing for the seizure and forfeiture of any explosives in respect of which any offence against this Act or any regulations made thereunder has been committed;

- (n) prohibiting the introduction of explosives into any specified area;
- (o) providing for the investigation and reporting of accidents;
- (p) providing for the destruction of explosives and mode of destruction;
- (q) providing for the classification of explosives;
- (r) prescribing the time within which an appeal may be brought under [section 21](#) and the procedure to be followed in relation to such an appeal;
- (s) the information to be supplied by any person to an Inspector and the reports to be made from time to time; and
- (t) any other matter which requires to be or may be prescribed for the purposes of this Act

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- (2) Any regulation made under this Act may, notwithstanding the provisions of section 21 of the General Interpretation Act, prescribe a fine of up to K20,000 and imprisonment for up to one year for an offence committed against any provision of such regulation.