



BERMUDA

EXPLOSIVE SUBSTANCES ACT 1974

1974 : 107

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29 Repeals *[omitted]*  
30 Commencement *[omitted]*

### SCHEDULE

*[preamble and words of enactment omitted]*

#### Interpretation

- 1 (1) In this Act, unless the context otherwise requires—
- “annual licence” shall be construed in accordance with section 11(5);
- “blasting licence” means a valid blasting licence issued under section 6;
- “blasting permit” means a valid blasting permit issued under section 7;
- “Commissioner” means the Commissioner of Police or any person acting on his authority;
- “explosive substance” means—
- (a) gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or other metals, coloured fires, and every other substance (whether similar to those above-mentioned or not) used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and
  - (b) any fuse, percussion cap, detonator or other contrivance designed to produce or assist any such effect as is described in paragraph (a); and
  - (c) any apparatus, machine, implement or materials used, or intended to be used, or adapted for causing, or aiding in causing, any such effect as is described in paragraph (a) and also any part of any such apparatus, machine or implement;
  - (d) any materials for making any such explosive substance, but does not include—
    - (i) ammunition as defined for the purposes of the Firearms Act 1973 [*title 10 item 5*];
    - (ii) a marine signal rocket or flare save to such extent as may be prescribed;
- “firework” means an explosive substance made for amusement;
- “licence” means a licence under this Act;
- “licensed magazine” means—
- (a) a magazine specified in a magazine licence;
  - (b) a magazine approved under section 8(3);
- “magazine licence” means a valid magazine licence issued under section 8;

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“Minister” means the Minister charged with responsibility for Works and Engineering;

“permit” means a permit under this Act;

“prescribed” means prescribed by rules under section 27;

“regulations” means regulations under section 26;

“store” in relation to an explosive substance means to retain such substances in any place for any period exceeding twelve hours.

(2) For the purposes of this Act the things which a person has in his possession shall be taken to include any thing subject to his control which is in the custody of another.

Crown to have monopoly in importation and distribution of explosive substances

2 (1) Subject to this Act the Minister shall have the exclusive right to import explosive substances into Bermuda and to distribute such substances to the users thereof.

(2) The Commissioner shall be deemed to be the agent of the Minister in the exercise of the functions of the Minister under subsection (1) in so far as these relate to the distribution of explosive substances.

Unlawful importation and supply of explosive substances

3 Subject to this Act, it is an offence for a person to—

- (a) import; or
- (b) supply or offer to supply to another; or
- (c) be concerned in the supplying to another of,

any explosive substances, otherwise than on the authority of the Minister and in accordance with the terms of such authority;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine;

Punishment on conviction on indictment: imprisonment for 3 years or a fine or both such imprisonment and fine.

Port of entry

4 (1) Subject to this Act, explosive substances shall be imported through a prescribed port of entry.

(2) It is an offence for a person to import an explosive substance otherwise than through a prescribed port of entry;

Punishment on summary conviction: a fine of \$500.

Offences in connection with possession and use of explosive substances

5 (1) Subject to this Act, it is an offence for any person to—

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- (a) have in his possession; or
- (b) use; or
- (c) manufacture,

any explosive substance;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine;

Punishment on conviction on indictment: imprisonment for 3 years or a fine or both such imprisonment and fine.

(2) Notwithstanding subsection (1)—

- (a) the holder of a blasting permit may possess and use explosive substances in accordance with the terms of his permit;
- (b) the holder of a magazine licence may store explosive substances in his licensed magazine, may transport explosive substances from any place where they are lawfully kept to such magazine, and may issue explosive substances from that magazine to any person entitled to possess them;
- (c) an officer of the Department of Works and Engineering who holds a blasting licence may possess and use explosive substances in the execution of his duty;
- (d) the holder of a magazine licence, or his employee, may possess and use explosive substances within a quarry and may transport such substances from the licensed magazine to the quarry;

Provided that nothing in this paragraph shall authorise any person other than the holder of a blasting licence to use an explosive substance;

- (e) any person may possess an explosive substance on behalf of the Minister or the Commissioner in the discharge of the Minister's or Commissioner's functions under section 2;
- (f) any person who may lawfully possess an explosive substance may manufacture such substance under and in accordance with a written permit of the Commissioner;
- (g) any person may transport an explosive substance for the Minister, the Commissioner or the holder of a magazine licence, to or from a licensed magazine;
- (h) an officer of the Customs Department may possess any explosive substance where such explosive substance comes into his possession in the execution of his duty under the Revenue Act 1898 [*title 14 item 10*], or other statutory provision.

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### Blasting licences

6 (1) A blasting licence shall qualify the holder to make application for a blasting permit and, in the circumstances specified in section 5(2)(c) and (d), to possess and use explosive substances.

(2) No blasting licence shall be issued other than to a person who satisfies the Commissioner that he is experienced or competent in carrying out blasting operations and that he is fit to be trusted in the handling of explosive substances.

(3) The Commissioner may restrict the number of blasting licences issued by him to such number as he considers is reasonably required.

(4) A blasting licence shall be an annual licence.

### Blasting permits

7 (1) A blasting permit shall authorise the holder to—

- (a) draw the explosive substances specified therein from a licensed magazine;
- (b) possess such explosive substances;
- (c) use such explosive substances in the manner specified in the permit.

(2) Without derogation from the generality of the Commissioner's powers under section 11 to impose conditions on a blasting permit the following conditions shall be deemed to be imposed upon such a permit, unless the Commissioner by endorsement upon the permit otherwise directs—

- (a) all explosive substances drawn from a licensed magazine under the permit shall either be used the same day or, if not so used, shall be returned the same day to the licensed magazine;
- (b) an explosive substance shall not be used otherwise than in the presence of a police officer.

(3) A blasting permit shall be valid upon the day specified in the permit only.

(4) A blasting permit shall be granted only to the holder of a blasting licence.

### Magazine licences

8 (1) A magazine licence shall entitle the holder to store the quantity of explosive substances specified in the licence in the magazine so specified.

(2) A magazine licence shall not be granted by the Commissioner unless he is satisfied that in all the circumstances of the case it is proper that he should grant one.

(3) The Minister and the Commissioner shall be deemed to be the holders of a magazine licence in respect of such magazines as the Commissioner may, by instrument in writing, approve for the purposes of this subsection, and such instrument shall specify the quantity of explosive substances which may be stored in such magazine.

(4) A magazine licence shall be an annual licence.

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### Special licences

9 (1) Notwithstanding anything to the contrary in this Act the Commissioner, where he is satisfied that circumstances of an exceptional character exist which justify the exercise by him of his powers under this section, may grant to any person a licence—

- (a) dispensing with such of the requirements of this Act relating to the importation, possession, use or manufacture of explosive substances as may be specified in the licence; and
- (b) authorising such person to import, possess, use or manufacture explosive substances.

(2) A licence issued under this section shall be valid for the period specified therein.

### Fireworks

10 (1) Notwithstanding anything to the contrary in this Act the Commissioner may grant a permit to—

- (a) a public officer in his capacity as such;
- (b) a municipal corporation;
- (c) the manager of an hotel,

to hold a display of fireworks and, for that purpose, to import and be in possession of fireworks.

(2) It shall be lawful for the holder of a permit issued under this section and for his agents or servants to import, possess and use the fireworks specified in the permit.

(3) A permit issued under this section shall state the date and place of the display of fireworks and the fireworks shall be used only upon such date and at such place unless the Commissioner otherwise permits.

### General provisions relating to licences and permits

11 (1) Licences and permits shall be granted by the Commissioner and—

- (a) shall be in such form as he may determine or as may be prescribed;
- (b) shall specify the conditions subject to which they are granted; and
- (c) shall not be transferable.

(2) No licence or permit shall be granted to a person whom the Commissioner has reason to believe is of intemperate habits or unsound mind, or to be for any other reason unfitted to hold a licence or permit.

(3) The Commissioner may refuse to grant a licence or permit on any ground he thinks fit without giving reasons therefor.

(4) A licence or permit shall take effect according to the tenor thereof.

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(5) An annual licence shall be valid for a period of twelve months from the 1st of June in any year until the 31st of May in the year next following.

(6) An annual licence may be renewed and this section shall apply to a renewal of a licence as it applies to a grant.

(7) An application for the grant of a licence or permit shall be made in such form as the Commissioner may determine or as may be prescribed and shall state such particulars as may be required by the form.

(8) Such fees shall be payable for a licence or permit as may be prescribed under the Government Fees Act 1965 [*title 15 item 18*].

(9) It is an offence for a person who is the holder of a licence or permit not to comply with any of its terms including any condition subject to which it is issued;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine.

(10) It is an offence for a person to make any alteration or erasure in a licence or permit except under the authority of the Commissioner;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine.

(11) It is an offence for a person to make any statement which he knows to be false for the purpose of procuring, whether for himself or another person, the grant or renewal of a licence or permit;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine.

### Variation of licences

12 (1) The Commissioner may at any time by notice in writing vary the conditions subject to which a licence or permit is held and may by the notice require the holder to deliver up the licence or permit to him within ten days from the date of the notice for the purpose of amending the conditions specified therein.

(2) It is an offence for a person to make a statement which he knows to be false for the purpose of procuring, whether for himself or another person, the variation of a licence or permit;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine.

### Revocation of licences

13 (1) A licence or permit may be revoked by the Commissioner for any reason that he thinks fit, and without derogation from the generality of the provisions hereof—

- (a) he may revoke a licence or permit if the holder is of intemperate habits or unsound mind or otherwise unfitted to be entrusted with an explosive substance;

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- (b) he may revoke a licence or permit if the holder fails to comply with a notice under section 12(1) requiring him to deliver up the licence or permit;
- (c) he may revoke a licence or permit if the holder is found guilty of an offence against this Act.

(2) Where a licence or permit is revoked by the Commissioner under this section, he shall by notice in writing require the holder to surrender the licence or permit and it is an offence for the holder to fail to do so within ten days of the date of the notice;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine.

### Storage of explosive substances

14 (1) It is an offence for a person to store or keep any explosive substance in a place other than in a licensed magazine or other place of safety approved of by the Commissioner;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine.

(2) It is an offence for any person to leave an explosive, substance in any place unless such explosive substance is properly safeguarded against removal;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine.

### Restriction on conveyance of explosive substances

15 It is an offence for a person to convey or allow any other person subject to his direction, orders or supervision to convey any explosive substances whether by land or sea within Bermuda except in accordance with the provisions of the regulations;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine.

### Negligent use of explosive substances, etc

16 It is an offence for a person, when carrying out a blasting operation or firing or discharging fireworks, to fail to adopt adequate precautions to safeguard persons or property;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine;

Punishment on conviction on indictment: imprisonment for 3 years or a fine or both such imprisonment and fine.

### Notification of accidents

17 (1) If any accident by explosion or fire, involving an explosive substance or fireworks, causes loss of life or personal injury or unlawful damage to property, the person in possession of such explosive substance or fireworks shall forthwith give notice to the



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Commissioner of such accident, together with such other particulars relating to the accident as the Commissioner may require.

(2) It is an offence to fail to give notice in accordance with subsection (1);

Punishment on summary conviction: a fine of \$1,000.

### Duty to report loss

18 It is an offence for a person ordinarily in possession of an explosive substance to fail to inform the Commissioner if the explosive substance cannot be found, or if there are grounds for believing or suspecting that the explosive substance is improperly in the possession or under the control of some other person;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine.

### Power of search

19 (1) If any magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Act has been, is being, or is about to be committed, he may grant a search warrant authorising a police officer named therein to enter at any time any premises or place named in the warrant, if necessary by force, and to search the premises or place and every person found there.

(2) If a police officer has reasonable grounds to suspect that any person is unlawfully in possession of any explosive substances, the police officer may, without warrant—

- (a) search that person, and detain him for the purposes of searching him;
- (b) search any vehicle or vessel in which the police officer suspects that any article liable to seizure may be found, and for that purpose require the person in control of the vehicle or vessel to stop it.

(3) No female shall be searched under this section except by a woman police officer.

(4) The power of search under this section shall extend to any receptacle or other article then in the possession of the person being searched and subsection (3) shall not apply to any such receptacle or article not being part of the wearing apparel of the female at the time of the search.

(5) A person commits an offence if he intentionally obstructs a person in the exercise of his powers under this section;

Punishment on summary conviction: imprisonment for 12 months or a fine of \$500 or both such imprisonment and fine.

(6) Any explosive substance in respect of which an offence under this Act has been committed shall, with effect from the seizure thereof, be forfeited to the Crown.

(7) Nothing in this section shall prejudice any power of search or any power to seize or detain property which is exercisable by any police officer apart from this section.

*[Section 19 subsection (1) amended by 2009:52 s.5 effective 4 January 2010]*

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### Production of licence

20 (1) A police officer may demand, from any person whom he believes to be in possession of an explosive substance, the production of his licence or permit.

(2) If a person upon whom a demand is made under this section fails to produce the licence or permit or to show he is entitled by virtue of this Act to have the explosive substance in his possession without holding the licence or permit, the police officer may seize and detain the explosive substance and may require the person to declare to him immediately his name and address.

(3) If under this section a person is required to declare to a police officer his name and address, it is an offence for him to refuse to declare it or to fail to give his true name and address;

Punishment on summary conviction: a fine of \$500.

### Powers of arrest

21 (1) A police officer may arrest without warrant a person who has committed or is committing, or whom the police officer, with reasonable cause suspects to have committed, or to be committing, an offence under this Act.

(2) This section shall not prejudice any power of arrest conferred by law apart from this section.

### Prosecution and punishment of offences

22 (1) *[deleted]*

(2) Notwithstanding anything in section 80 of the Criminal Jurisdiction and Procedure Act 2015 summary proceedings for an offence under this Act may be commenced at any time within twelve months from the time when the offence was committed.

(3) Notwithstanding anything in the Criminal Code, a person who attempts to commit an offence under this Act or who solicits, incites, procures or conspires with another to commit an offence under this Act shall be guilty of an offence and shall be liable to the same punishment as is provided for that offence.

(4) Upon an indictment charging a person with an offence under sections 223, 224, 225, 226 and 227 of the Criminal Code [*title 8 item 31*] he may be convicted of being in possession of an explosive substance contrary to section 5(1) if the latter offence is established by the evidence.

*[Section 22 subsection (2) amended by 2015 : 38 s. 91 effective 6 November 2015]*

### Presumptions

23 (1) In a prosecution under this Act and without prejudice to any other provision of this Act—

- (a) where it is proved that a person imported anything containing an explosive substance it shall be presumed, until the contrary is proved, that such person knew that such explosive substance was contained in such thing;

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(b) where it is proved that a person had in his possession or custody or under his control anything containing an explosive substance it shall be presumed until the contrary is proved, that such person was in possession of such explosive substance.

(2) The presumptions provided by subsection (1) shall not be rebutted by proof that a person never had physical possession of the explosive substance.

(3) The presumptions provided by subsection (1) shall not be construed as requiring the prosecution to prove any fact which by virtue of any other provision of this Act or other statutory provision, the prosecution does not have to prove.

### Application of Act to certain disciplined forces and to the Crown

24 (1) Nothing in this Act shall render unlawful the possession, carrying or use of an explosive substance issued to any person who is a—

- (a) police officer, member of the Reserve Police, or special constable;
- (b) member of the Bermuda Regiment or Bermuda Volunteer Reserve;
- (c) member of Her Majesty's armed forces or the armed forces of the United States, for the execution of his duty or dealt with by any such person in the execution of such duty.

(2) Subject to section 5 and to subsection (1) this Act shall apply to public officers as it does to persons who are not public officers.

*[section 24 amended by 1997:37 effective by notice in Official Gazette]*

### Act not to apply in certain cases

25 (1) Nothing in this Act shall apply to any explosive substance on board any ship or aircraft which is a ship of war or a military aircraft of a foreign nation.

(2) Nothing in this Act shall apply to any explosive substance consigned to some place outside Bermuda and in transit on any vessel as bona fide cargo and entered on the manifest.

### Power of Minister to make regulations

26 (1) The Minister may make regulations—

- (a) regulating the unloading and loading of explosive substances;
- (b) regulating the transport and storage of explosive substances;
- (c) prohibiting the introduction of explosive substances into any specified area;
- (d) requiring persons using or possessing explosives to keep records in such form as the regulations may prescribe and to make such returns as may be so prescribed;
- (e) regulating the use of explosive substances;

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- (f) regulating the manufacture of explosive substances;
- (g) providing for the inspection of places where explosive substances are kept or used;
- (h) generally to ensure the safety of persons who possess or use explosive substances and persons who may be affected by their use.

(2) Regulations under this section may impose penalties for the breach thereof not exceeding twelve months imprisonment or a fine not exceeding five hundred dollars, or both such imprisonment and fine.

(3) The affirmative resolution procedure shall apply to regulations made under this section.

### Power of Governor to make rules

27 (1) The Governor may make rules—

- (a) prescribing the form of licences and permits under this Act, returns and other documents;
- (b) prescribing measures to be taken for the security of explosive substances;
- (c) prescribing the manner by which any notice under this Act may be given;
- (d) prescribing anything which, by this Act is permitted or required to be prescribed;
- (e) generally for carrying this Act into effect.

(2) Without derogation from the generality of subsection (1), rules under this section may regulate or restrict the sale, possession or use of marine signal flares or rockets and make provision for the safekeeping, safety and destruction of such flares or rockets and may further apply or exclude the application of any provision of this Act to such flares or rockets.

(3) Rules made under this section may impose penalties for the breach thereof not exceeding twelve months imprisonment or a fine of fifty dollars, or both such imprisonment and fine.

(4) The negative resolution procedure shall apply to rules made under this section.

### Transitional

28 *[omitted]*

### Repeals

29 *[omitted]*

### Commencement

30 *[omitted]*

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SCHEDULE

TABLE OF PUNISHMENTS

*[deleted]*

[Assent Date: 13 December 1974]

[This Act was brought into operation on 1 June 1975 by SR&O 74/1975]

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*[Amended by:*

1977 : 35

1988 : 19

1997 : 37

2009 : 52

2015 : 38]