

EXPLOSIVES ACT NO. 26 OF 1956

[View Regulation]

[ASSENTED TO 2 MAY, 1956]

[DATE OF COMMENCEMENT: 4 MAY, 1956]

(English text signed by the Governor-General)

This Act has been updated to *Government Gazette* 18499 dated 10 December, 1997.

as amended by

Explosives Amendment Act, No. 79 of 1962

Explosives Amendment Act, No. 21 of 1963

Mines and Works and Explosives Amendment Act, No. 46 of 1964
[with effect from 29 May, 1964]

Explosives Amendment Act, No. 20 of 1965

Explosives Amendment Act, No. 12 of 1967

Explosives Amendment Act, No. 74 of 1972

Explosives Amendment Act, No. 35 of 1975

Explosives Amendment Act, No. 101 of 1977

Explosives Amendment Act, No. 5 of 1981

Explosives Amendment Act, No. 18 of 1983

Transfer of Powers and Duties of the State President Act, No. 97 of 1986
[with effect from 3 October, 1986]

Application of Certain Laws to Namibia Abolition Act, No. 56 of 1991
[with effect from 22 May, 1991]

Explosives Amendment Act, No. 178 of 1993

Explosives Amendment Act, No. 83 of 1997

ACT

To consolidate the laws relating to the manufacture, storage, sale, transport, importation, exportation and the use of explosives.

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1. Definitions.—In this Act and in any regulations made thereunder, unless the context otherwise indicates—

“authorized explosive” means an explosive included in a list approved by the Minister and published by notice in the *Gazette*;

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

“Convention” means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, which is set out in Schedule 1;

[Definition of “Convention” inserted by s. 1 (a) of Act No. 83 of 1997.]

“danger building” means any building or part thereof used as an explosives factory or explosives magazine, or in connection therewith, unless in respect of that building or part thereof a certificate has been granted in accordance with regulation;

“detection agent” means any detection agent included in the Technical Annex to the Convention;

[Definition of “detection agent” inserted by s. 1 (b) of Act No. 83 of 1997.]

“explosives” means—

- (a) gunpowder, nitro-glycerine, dynamite, guncotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those herein mentioned 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, cartridge, and every adaptation or preparation of an explosive;
- (c) any other substance which the State President may from time to time by proclamation in the *Gazette* declare to be an explosive;

“explosives factory” means any site licensed under this Act for the manufacture of explosives, together with every mound, building (including a magazine), and work thereon for whatsoever purpose used;

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

“factory licence” means any licence valid under the provisions of section 11 or any licence issued under section 22 (1) (a) in respect of a factory for the manufacture of explosives;

[Definition of “factory licence” substituted by s. 1 of Act No. 35 of 1975.]

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

"manufacture" means the 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;

"marked", in relation to a plastic explosive, means the introduction of a detection agent into the plastic explosive in accordance with the Technical Annex to the Convention;

[Definition of "marked" inserted by s. 1 (c) of Act No. 83 of 1997.]

"Minister" means the Minister of Law and Order;

[Definition of "Minister" substituted by s. 1 of Act No. 5 of 1981 and by s. 1 of Act No. 178 of 1993.]

"plastic explosive" means any explosive in flexible or elastic sheet form which—

- (a) is formulated with one or more high explosives which in their pure form have a vapour pressure of less than 10^{-4} Pa at a temperature of 25° C;
- (b) is formulated with any binder material; and
- (c) is, as a mixture, malleable or flexible at normal room temperature;

[Definition of "plastic explosive" inserted by s. 1 (d) of Act No. 83 of 1997.]

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

"regulation" means a regulation made or deemed to have been made under this Act;

"unauthorized explosive" means an explosive not included in a list of authorized explosives.

2. Power of Minister to appoint inspectors.—(1) The Minister may, subject to the laws governing the Public Service, appoint a chief inspector of explosives, and such inspectors of explosives, and such other officers, as to him may seem necessary for carrying out the provisions of this Act and the regulations.

[Sub-s. (1) amended by s. 1 (1) (a) of Act No. 20 of 1965.]

(2) An inspector shall have jurisdiction to try any person for a breach of any regulation or of any special rule made under section twenty-six, unless the death of any person has been caused by such breach.

(3) The law relating to mines, works, and machinery, in so far as that law deals with the trial of offences by inspectors of mines, shall *mutatis mutandis* apply to trials by an inspector under the powers conferred by this section.

(4) An inspector shall not in respect of any offence over which he has jurisdiction under this section, impose a fine of more than five pounds or imprisonment for a period exceeding one month.

(5) The Commissioner of the South African Police or any member of the South African Police designated by him, may depute 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 and the regulations, but he shall have no jurisdiction to try any persons for breaches of regulations or special rules.

[Sub-s. (5) amended by s. 1 (1) (b) of Act No. 20 of 1965 and substituted by s. 2 of Act No. 35 of 1975 and by s. 2 of Act No. 5 of 1981.]

3. Prohibition of manufacture of unauthorized explosives except in small quantities for chemical experiment.—(1) No person shall manufacture any unauthorized explosive unless it is manufactured not for sale and solely for purposes of chemical experiment or for practical trial as an explosive and in such quantities and under such conditions as may be prescribed in writing by an inspector.

(2) Any person who contravenes the provisions of this section or any condition prescribed thereunder shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years, and the explosive in respect of which the contravention has taken place shall be forfeited.

[Sub-s. (2) amended by s. 1 of Act No. 21 of 1963 and substituted by s. 3 of Act No. 5 of 1981 and by s. 2 of Act No. 178 of 1993.]

(3) The owner and the occupier of any premises in or on which an unauthorized explosive is manufactured in contravention of this section shall be deemed to be the manufacturer, unless such owner or occupier (as the case may be) proves that he was unaware that any such contravention occurred.

(4) The burden of proving that any manufacture of an unauthorized explosive was solely for purposes of chemical experiment or practical trial and not for sale, shall, in any prosecution under this section, be upon the accused.

4. Prohibition of manufacture of authorized explosives except in licensed factories.—(1) No person shall manufacture any authorized explosive in any place other than an explosives factory.

(1A) (a) The chief inspector of explosives may grant permission, subject to the conditions prescribed by him in writing, to any person applying therefor in writing, to manufacture, at a place approved by the said chief

inspector which is not in an explosives factory, by adding ammonium nitrate to or mixing it with non-explosive component parts, so approved, of an authorized explosive so approved, blasting material which is a so approved authorized explosive, for use at a blasting-place mentioned in the application.

[Para. (a) substituted by s. 3 of Act No. 35 of 1975.]

(b) Subsection (1) shall not apply to the manufacture of an authorized explosive in terms of such permission.

[Sub-s. (1A) inserted by s. 1 of Act No. 12 of 1967.]

(2) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years, and the explosive in respect of which such contravention has taken place shall be forfeited.

[Sub-s. (2) amended by s. 2 of Act No. 21 of 1963 and substituted by s. 4 of Act No. 5 of 1981 and by s. 3 of Act No. 178 of 1993.]

5. Prohibition of storage or possession of unauthorized explosives save in accordance with section three.—(1) No person shall keep, store or be in possession of any unauthorized explosive unless it has been manufactured as provided by subsection (1) of section three and is kept, stored or possessed in such manner and in such quantities as have been approved in writing by an inspector.

(2) The provisions of subsections (2), (3) and (4) of section three shall apply *mutatis mutandis* in the case of any contravention of this section or of any of the conditions prescribed thereunder.

6. Prohibition of storage of authorized explosives except in licensed premises.—(1) No person shall keep, store or be in possession of, any authorized explosive in or on any premises—

- (a) except in an explosives factory or explosives magazine; or
- (b) unless the explosive be kept for private use, and not for sale or other disposal, and in accordance with regulation; or
- (c) unless the explosive be kept by the State for use in the construction of any railway, road, or other public work, and be stored in a temporary magazine approved by an inspector and under conditions prescribed in writing by an inspector; or
- (d) unless authorized thereto by a permit issued by an inspector and the explosive be kept in quantities not exceeding 500 kilograms, and be stored in an isolated place approved by an inspector and under conditions prescribed in writing by an inspector; or
- (e) unless the explosive be kept by a person in possession of a licence, as provided in section seven, to deal in explosives, and in accordance with any conditions attached to that licence, or prescribed by regulation.

[Para. (d) amended by s. 1 of Act No. 74 of 1972.]

(2) Any person who contravenes the provisions of this section or any condition prescribed thereunder or referred to therein, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years, and the explosive in respect of which the contravention has taken place shall be forfeited.

[Sub-s. (2) amended by s. 3 of Act No. 21 of 1963 and substituted by s. 5 of Act No. 5 of 1981 and by s. 4 of Act No. 178 of 1993.]

(3) The owner and the occupier of any premises in, at, or on which any contravention of this section occurs, shall be liable to the penalties prescribed for any such contravention, unless such owner or occupier (as the case may be) proves that he was unaware that any such contravention occurred.

7. Licence necessary to deal in explosives.—(1) No person, other than the manufacturer, shall sell or deal in any explosive unless he is in possession of a licence granted under the regulations, which shall be in addition to any other licence which may be required in terms of any other law.

(2) The fees, if any, payable in respect of any such licence and the period for which it shall be valid, shall be prescribed by regulation.

[Sub-s. (2) substituted by s. 4 of Act No. 21 of 1963.]

(3) Any regulations made for the purposes of subsection (2) may differentiate between licences in respect of fireworks and licences in respect of other explosives, and may provide that the licence fees shall vary according to the period for which a licence is issued.

[Sub-s. (3) substituted by s. 4 of Act No. 21 of 1963.]

(4) No person shall supply (whether in pursuance of a sale or otherwise) any explosive, other than fireworks, to any other person, except under a permit issued by or under the authority of an inspector.

(5) No person shall acquire any explosive, other than fireworks, from any other person, except under a permit issued by or under the authority of an inspector.

(6) For the purposes of subsection (1) any person who in any district where there is no person licensed to sell blasting materials, supplies blasting materials in accordance with regulation to consumers thereof shall, unless

he sells to such consumers at a profit, be deemed not to be selling or dealing in explosives.

8. No importation or exportation of explosives without permit.—No person shall import into or export from the Republic, or cause to be imported thereto or exported therefrom any explosive, unless he has obtained a permit issued under the authority of an inspector.

8A. Prohibited acts relating to plastic explosives which are not marked with detection agents.—(1) As from the date of commencement of the Explosives Amendment Act, 1997, no person shall manufacture, transship, import, keep, store, possess, transfer, sell, supply, transmit or export any plastic explosive which is not marked with a detection agent.

(2) Subject to the other provisions of this Act, the provisions of subsection (1) shall not apply in respect of—

- (a) the keeping, storage, possession, transfer, selling or supply of any plastic explosive which is not marked with a detection agent and which was manufactured in, or imported into, the Republic immediately prior to the date of commencement of the Explosives Amendment Act, 1997, by any person for a period not exceeding three years as from the said date;
- (b) the transshipment, importation, keeping, storage or possession of any plastic explosive which is not marked with a detection agent, or the keeping, storage, possession, transmission or exportation of any plastic explosive which is not marked with a detection agent and which was manufactured in, or imported into, the Republic immediately prior to the said date, by or on behalf of an organ of State performing military or police functions for a period not exceeding 15 years as from the said date;
- (c) the manufacturing, keeping, storage, possession, transfer, selling or supply of any plastic explosive which is not marked with a detection agent—
 - (i) solely for use in—
 - (aa) the research, development or testing of new or modified explosives;
 - (bb) the training in the detection of explosives; or
 - (cc) the development or testing of equipment for the detection of explosives; or
 - (ii) solely for forensic science purposes,

and in such quantities and under such conditions as may be prescribed in writing by the chief inspector of explosives appointed under section 2 (1); or

- (d) the manufacturing, keeping, storage, possession, transfer, selling or supply of any plastic explosive which is not marked with a detection agent and which is intended to be incorporated, and is incorporated, as an integral part of any military device within the Republic for a period not exceeding three years as from the said date.

(3) Any person who contravenes a provision of this section shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years, and the plastic explosive in respect of which the contravention has taken place shall be forfeited to the State.

[S. 8A inserted by s. 2 of Act No. 83 of 1997.]

8B. Furnishing chief inspector of explosives with information in regard to plastic explosives.—(1) Any person, except the State or any organ of State, who or which has in his, her or its possession or custody or under his, her or its control any plastic explosive on the date of commencement of the Explosives Amendment Act, 1997, shall furnish the chief inspector of explosives appointed under section 2 (1) in writing within 120 days as from the said date with information regarding the quantity of plastic explosive in his, her or its possession or custody or under his, her or its control on the said date, the manufacturer or importer thereof, any marks of identification thereon and whether it is marked with a detection agent or not.

(2) Any person who fails to comply with a provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

[S. 8B inserted by s. 2 of Act No. 83 of 1997.]

9. Prohibition of use of blasting materials without permit.—(1) No person shall use any blasting material—

- (a) unless he is in possession of a permit issued by or under the authority of an inspector; or
- (b) unless he is, while using such blasting material, under the immediate and constant supervision of a person who is in possession of such a permit.

(2) No person shall permit any other person who is not in possession of such a permit to use any blasting material unless such other person is, while using such blasting material, under the immediate and constant supervision of a person who is in possession of such a permit.

(3) Any permit issued prior to the date of commencement of the Explosives Amendment Act, 1951 (Act No. 32 of 1951), by a person other than an inspector, shall, if in force on the date of commencement of this Act, be deemed to have been issued under the authority of an inspector.

(4) No permit shall be issued under this section unless the issuing authority is satisfied that the applicant

may be entrusted with safety with the use of blasting materials and that it is necessary for him to use such materials.

[Sub-s. (4) added by s. 2 of Act No. 20 of 1965.]

10. Penalties.—Any person who contravenes any provision of section 7, 8 or 9 shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

[S. 10 amended by s. 5 of Act No. 21 of 1963 and substituted by s. 6 of Act No. 5 of 1981 and by s. 5 of Act No. 178 of 1993.]

11. Owners and occupiers of existing factories entitled to a licence.—The licence of any factory or magazine which is in force at the commencement of this Act shall continue to be valid, provided that the conditions under which the licence was granted are still applicable.

12.

[S. 12 repealed by s. 4 of Act No. 35 of 1975.]

13.

[S. 13 amended by s. 2 of Act No. 74 of 1972 and repealed by s. 4 of Act No. 35 of 1975.]

14 and 15.

[Ss. 14 and 15 repealed by s. 4 of Act No. 35 of 1975.]

16.

[S. 16 amended by s. 6 of Act No. 21 of 1963 and repealed by s. 4 of Act No. 35 of 1975.]

17. Annual fees in respect of explosives manufactured.—The holder of any factory licence shall at such times as may be prescribed by regulation pay to an inspector the fees so prescribed calculated on the value of the explosives manufactured in such factory—

- (a) exceeded £100 but did not exceed £10,000, of £2 10s. 0d.;
- (b) exceeded £10,000 but did not exceed £50,000, of £5 0s. 0d.;
- (c) exceeded £50,000 but did not exceed £100,000, of £10 0s. 0d.;
- (d) exceeded £100,000 but did not exceed £500,000, of £15 0s. 0d.;
- (e) exceeded £500,000 but did not exceed £1,000,000, of £25 0s. 0d.;
- (f) exceed £1,000,000, of £50 0s. 0d.

[S. 17 amended by s. 7 of Act No. 21 of 1963.]

18.

[S. 18 amended by s. 8 of Act No. 21 of 1963 and repealed by s. 4 of Act No. 35 of 1975.]

19.

[S. 19 repealed by s. 4 of Act No. 35 of 1975.]

20.

[S. 20 amended by s. 9 of Act No. 21 of 1963 and repealed by s. 4 of Act No. 35 of 1975.]

21.

[S. 21 amended by s. 10 of Act No. 21 of 1963 and repealed by s. 4 of Act No. 35 of 1975.]

22. Licensing of factories for the manufacture of explosives and magazines for the storage thereof.—

(1) (a) Any person who desires to erect or carry on a factory for the manufacture or a magazine for the storage of explosives, shall make application for a licence therefor to the chief inspector of explosives, who may issue such a licence subject to the observance of the regulations and after consultation with the local authority, if any, and upon such other conditions as he may think fit to attach to the licence, or refuse to issue such a licence if in his opinion the applicant is not a suitable person to hold the licence in question.

(b) An applicant whose application for a licence is refused by the chief inspector of explosives in terms of paragraph (a) may appeal to the Minister.

(2) Any person who contravenes any condition of a licence issued under this section shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding four years.

(3) Any licence issued under this section or the conditions thereof may upon application be amended by the chief inspector of explosives, provided he is satisfied that the safety of the public or of any person employed in or at the factory or magazine in question will not be thereby diminished.

(4) Any such licence may be transferred into the name of another, provided four weeks' notice in writing of the desire to transfer is sent to the chief inspector of explosives, who shall not refuse such a transfer, except upon the ground that the proposed transferee is not a suitable person to hold the licence in question.

(5) Whenever the chief inspector of explosives refuses the transfer of a licence in terms of subsection (4), the holder of the licence or the proposed transferee may appeal to the Minister.

(6) Any licence issued under this section shall expire on a date prescribed by regulation and shall become void if the factory or magazine in question is used for any purpose not provided for in the licence.

(7) (a) The chief inspector of explosives may revoke any licence issued under this section if he is satisfied that the holder thereof is no longer a suitable person to hold the licence in question.

(b) The holder of a licence revoked under paragraph (a), may appeal to the Minister.

(8) The fees prescribed by regulation shall be payable for any licence issued under this section.

(9) A fee as prescribed by regulation shall be payable on every occasion that a licence is amended or transferred under this section.

(10) The chief inspector of explosives may delegate any power or duty conferred or imposed upon him under this section in respect of magazines, to any inspector of explosives or any person deputed to act as an inspector under section 2.

[S. 22 amended by s. 11 of Act No. 21 of 1963 and substituted by s. 5 (1) of Act No. 35 of 1975.]

23. Powers of inspectors to enter and inspect factories and other premises where explosives are stored or suspected of being stored.—(1) Any inspector may—

- (a) enter any explosives factory or explosives magazine at any hour of the day or night for the purpose of inspecting the same and of making inquiries relative to the compliance with the provisions of this Act and the regulations, or relative to the means used therein for preserving the safety of the public or of any person employed therein;
- (b) enter at any hour of the day or night upon any premises in which explosives are kept, or in which there is good reason to suspect that explosives are being manufactured or stored or kept or conveyed in contravention of the provisions of this Act or the regulations, and inspect any such premises and make all such inquiries thereon as he may think fit;
- (c) require the occupier or other person for the time being in charge of any explosives factory, explosives magazine, or other premises in this section mentioned, 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.

(2) No power conferred by this section shall be so exercised as unnecessarily to hinder the work carried on in any such factory, magazine, or premises aforesaid.

24. Penalties for obstructing inspector, refusing to answer inquiries, etc.—Any person who wilfully obstructs or hinders any inspector in the exercise of the powers or duties conferred or imposed upon him by this Act or the regulations, or disobeys any lawful order of an inspector, or who upon demand fails to answer as far as he may be able any question lawfully put by an inspector, or who gives false information to an inspector, whether in answer to any such question or not, or who falsely holds himself out to be an inspector, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

[S. 24 amended by s. 12 of Act No. 21 of 1963 and substituted by s. 1 of Act No. 101 of 1977, by s. 8 of Act No. 5 of 1981 and by s. 7 of Act No. 178 of 1993.]

25. Power of inspector to order discontinuance of dangerous methods subject to appeal in accordance with regulation.—If upon any inspection an inspector discovers that any method of work, packing, or storage is being used which is in conflict with the provisions of this Act or of any regulation, or which, in his opinion, is calculated to endanger the safety of the public or of any person employed in the premises inspected, he may require the immediate discontinuance of that method: Provided that any person who is dissatisfied with a decision that a method is calculated to endanger safety, may within fourteen days thereof, lodge an appeal as provided by regulation.

26. Duty of occupier of a factory to make special rules.—(1) Every occupier of a factory shall, subject to the approval of the chief inspector of explosives, make special rules for regulating the persons employed in that factory with a view to securing the observance therein of the provisions of this Act and the regulations, the safety and proper discipline of all such persons, and the safety of the public.

(2) The occupier of any magazine or of any premises where explosives are dealt in, shall, if it seems to an inspector to be necessary, make such special rules as are described in subsection (1); and, in respect of penalties, any special rules made under this section shall be deemed to be regulations under this Act.

(3) The occupier of any such factory, magazine, or premises shall take all reasonable steps for ensuring or enforcing the observance of any such special rules.

27. Penalties for endangering safety or causing loss of life.—(1) Any person causing an explosion whereby life or property is endangered shall be guilty of an offence and liable on conviction to the following penalties, according as the explosion was negligently or wilfully caused; that is to say—

(a) if the explosion is negligently caused and property is endangered, he shall be liable to a fine or to imprisonment for a period not exceeding four years;

[Para. (a) amended by s. 13 (a) of Act No. 21 of 1963 and substituted by s. 9 (a) of Act No. 5 of 1981 and by s. 8 (a) of Act No. 178 of 1993.]

(b) if the explosion is negligently caused and life is endangered, he shall be liable to a fine or to imprisonment for a period not exceeding four years;

[Para. (b) amended by s. 13 (b) of Act No. 21 of 1963 and substituted by s. 9 (b) of Act No. 5 of 1981 and by s. 8 (a) of Act No. 178 of 1993.]

(c) if the act or omission causing danger to life or property is wilful, he shall, where death does not result therefrom, be liable to imprisonment without the option of a fine for a period of not less than three years and not more than fifteen years, and the explosives and any apparatus or conveyance used in connection with or involved in the act or omission may be declared to be forfeited;

[Para. (c) substituted by s. 13 (c) of Act No. 21 of 1963.]

(d) if the explosion is negligently caused and death results, he shall be liable on conviction to a fine or to imprisonment for a period not exceeding six years.

[Para. (d) amended by s. 13 (d) of Act No. 21 of 1963 and substituted by s. 8 (b) of Act No. 178 of 1993.]

(1A) Any person who in any manner—

(a) threatens, or falsely alleges, knowing it to be false, that any other person intends, to cause an explosion whereby life or property is or may be endangered or in order to intimidate any person;

(b) communicates false information, knowing it to be false, regarding any explosion or alleged explosion or any attempt or alleged attempt thereto,

shall be guilty of an offence and liable on conviction to imprisonment without the option of a fine for a period of not less than three years and not more than fifteen years.

[Sub-s. (1A) inserted by s. 2 of Act No. 101 of 1977.]

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

(3) For the purposes of this section "explosion" includes a fire caused by an explosive.

28. Penalties for possession of explosives under certain circumstances.—(1) Any person who is found to have in his possession or under his control any explosive under such circumstances as to give rise to a reasonable suspicion that he intended to use such explosive for the purpose of injuring any person or damaging any property, shall, unless he satisfies the court that he had no such intention as aforesaid, be guilty of an offence and liable on conviction to the penalties prescribed in paragraph (c) of subsection (1) of section twenty-seven.

(2) For the purposes of subsection (1) "explosive" includes—

(a) a petrol bomb;

(b) any container, apparatus, instrument or article which—

(i) contains any inflammable substance and can be used, or can be adapted so that it can be used, to cause an explosion or a fire; or

(ii) was made, or can be adapted, to cause, in combination with or by means of any inflammable substance, an explosion or a fire.

[S. 28 amended by s. 14 of Act No. 21 of 1963. Sub-s. (2) added by s. 1 of Act No. 18 of 1983.]

29. Power of regional courts to impose certain penalties.—A court of a regional division within the meaning of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall, notwithstanding anything to the contrary contained in any law, have power to impose a penalty mentioned in section 27 (1) (c) or (1A).

[S. 29 substituted by s. 15 of Act No. 21 of 1963 and by s. 10 of Act No. 5 of 1981.]

30. Regulations.—(1) The Minister may make regulations as to—

(a) the construction of explosives factories, 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 grant, cancellation and suspension of any permit mentioned in this Act, the period for which any such permit may be issued and the fees which shall be payable in respect of the issue of any such permit;
- (f) 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;
- (g) the prohibition of the transport of explosives or the use for the transportation thereof of any means of transport except under authority of a permit issued by an officer authorized by such regulations, the grant, cancellation and suspension of any such permit, the period for which any such permit may be issued and the fees which shall be payable in respect of the issue of any such permit;
- (h) the issue of licences to dealers in explosives, the conditions of any such licence, the restrictions which may be placed upon the sale or disposal of explosives to particular classes of persons, and the quantity of any explosive which may be purchased by any person or company under permit from the officer authorized by such regulation;
- (h)*bis* the fees payable in respect of a licence issued under section 7 or 22, and the period for which any such licence shall be valid;
[Para. (h)*bis* inserted by s. 16 (a) of Act No. 21 of 1963 and substituted by s. 6 (a) of Act No. 35 of 1975.]
- (h)*ter* the fees payable under section seventeen and the periods in respect of which and the times at which such fees shall be paid;
[Para. (h)*ter* inserted by s. 16 (a) of Act No. 21 of 1963.]
- (h)*quat* the fees payable in respect of any amendment or transfer of a licence issued under section 22;
[Para. (h)*quat* inserted by s. 16 (a) of Act No. 21 of 1963 and substituted by s. 6 (b) of Act No. 35 of 1975.]
- (i) the inquiry into the circumstances of explosions (including outbreaks of fire caused or suspected to have been caused by explosives) endangering or causing injury to persons or property or death, and for the giving of notice of all such explosions;
- (j) the prevention of trespass in or upon an explosives factory, or in or upon any magazine or other place where explosives are kept;
- (k) the tests to which explosives, or the raw materials from which explosives are manufactured, are liable to be submitted;
- (l) the manner in which appeals under section twenty-five shall be notified and conducted, and the manner in which inspectors shall try any person for a contravention of or failure to comply with the regulations, or breaches of special rules made under section twenty-two or twenty-six;
- (m) the statistics which manufacturers and dealers may be called upon to supply,

and generally for the protection of life and property and for the better carrying out of the objects and purposes of this Act.

[Sub-s. (1) amended by s. 46 of Act No. 97 of 1986.]

(2) Regulations made under subsection (1) may provide penalties for a contravention thereof or failure to comply therewith not exceeding in any case a fine of R3 000, or imprisonment for a period of two years, and the regulations may further provide that the explosive, if any, in respect of which the contravention or non-compliance has taken place may be forfeited.

[Sub-s. (2) amended by s. 16 (b) of Act No. 21 of 1963 and substituted by s. 9 of Act No. 178 of 1993.]

(3) Such regulations may prescribe daily penalties for a continuing contravention or non-compliance or increased penalties for a second or subsequent contravention or non-compliance.

(4) Different regulations may be made in respect of different provinces, districts, or areas in the Republic, or in respect of different categories of licences.

[Sub-s. (4) substituted by s. 6 (c) of Act No. 35 of 1975.]

(5) Any regulation regarding the payment of fees, shall be made in consultation with the Minister of Finance.

[Sub-s. (5) added by s. 6 (d) of Act No. 35 of 1975.]

31. Application of this Act.—Save as is otherwise provided in section 8A, nothing in this Act contained shall apply—

- (a) to the importation, storage, use, manufacture or transport of any explosive by the South African Defence Force or any police force constituted under any law or by the defence force of any country which the Minister, after consultation with the Minister of Defence, by notice in the *Gazette* exempts from the provisions of this Act relating to such importation, storage, use, manufacture or transport:

Provided that the Minister may in the same manner cancel or suspend any exemption thus granted;
[Para. (a) substituted by s. 1 of Act No. 79 of 1962 and by s. 11 of Act No. 5 of 1981.]

- (b) to any ammunition, if a licence to possess it or to deal therein is regulated by any other law;
- (c) to the transfer, transport, use, storage and distribution of explosives in so far as these activities are governed by any regulation made under paragraph (f) of subsection (1) of section twelve of the Mines and Works Act, 1956 (Act No. 27 of 1956);
[Para. (c) substituted by s. 12 of Act No. 46 of 1964.]

- (d) to the possession or conveyance 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 such sample is kept and conveyed with all due precaution.
[S. 31 amended by s. 3 of Act No. 83 of 1997.]

31A.

[S. 31A inserted by s. 3 of Act No. 74 of 1972 and repealed by s. 1 of Act No. 56 of 1991.]

32. Repeal of laws.—(1) Subject to the provisions of subsection (2), the laws mentioned in Schedule 2 are hereby repealed to the extent set out in the third column thereof.
[Sub-s. (1) substituted by s. 4 of Act No. 83 of 1997.]

(2) Any proclamation, regulation, notice, approval, authority, licence, permit, certificate or document issued, made, given or granted and any other action taken under any provision of a law repealed by subsection (1), shall be deemed to have been issued, made, given, granted or taken under the corresponding provision of this Act.

33. Short title.—This Act shall be called the Explosives Act, 1956.

Schedule 1 CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION
[Schedule 1 inserted by s. 5 of Act No. 83 of 1997.]

THE STATES PARTIES TO THIS CONVENTION,

CONSCIOUS of the implications of acts of terrorism for international security;

EXPRESSING deep concern regarding terrorist acts aimed at destruction of aircraft, other means of transportation and other targets;

CONCERNED that plastic explosives have been used for such terrorist acts;

CONSIDERING that the marking of such explosives for the purpose of detection would contribute significantly to the prevention of such unlawful acts;

RECOGNIZING that, for the purpose of deterring such unlawful acts, there is an urgent need for an international instrument obliging States to adopt appropriate measures to ensure that plastic explosives are duly marked;

CONSIDERING United Nations Security Council Resolution 635 of 14 June 1989 and United Nations General Assembly Resolution 44/29 of 4 December 1989 urging the International Civil Aviation Organization to intensify its work on devising an international regime for the marking of plastic or sheet explosives for the purpose of detection;

BEARING IN MIND Resolution A27-8 adopted unanimously by the 27th Session of the Assembly of the International Civil Aviation Organization which endorsed with the highest and overriding priority the preparation of a new international instrument regarding the marking of plastic or sheet explosives for the purpose of detection;

NOTING with satisfaction the role played by the Council of the International Civil Aviation Organization in the preparation of the Convention, as well as its willingness to assume functions related to its implementation;

HAVE AGREED AS FOLLOWS:

Article I

For the purposes of this Convention:

1. 'Explosives' mean explosive products, commonly known as 'plastic explosives', including explosives in flexible or elastic sheet form, as described in the Technical Annex to this Convention.
2. 'Detection agent' means a substance as described in the Technical Annex to this Convention which is introduced into an explosive to render it detectable.
3. 'Marking' means introducing into an explosive a detection agent in accordance with the Technical Annex to this Convention.
4. 'Manufacture' means any process, including reprocessing, that produces explosives.
5. 'Duly authorized military devices' include, but are not restricted to, shells, bombs, projectiles, mines, missiles,

rockets, shaped charges, grenades and perforators manufactured exclusively for military or police purposes according to the laws and regulations of the State Party concerned.

6. 'Producer State' means any State in whose territory explosives are manufactured.

Article II

Each State Party shall take the necessary and effective measures to prohibit and prevent the manufacture in its territory of unmarked explosives.

Article III

1. Each State Party shall take the necessary and effective measures to prohibit and prevent the movement into or out of its territory of unmarked explosives.
2. The preceding paragraph shall not apply in respect of movements, for purposes not inconsistent with the objectives of this Convention, by authorities of a State Party performing military or police functions, of unmarked explosives under the control of that State Party in accordance with paragraph 1 of Article IV.

Article IV

1. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of unmarked explosives which have been manufactured in or brought into its territory prior to the entry into force of this Convention in respect of that State, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
2. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article not held by its authorities performing military or police functions are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of this Convention in respect of that State.
3. Each State Party shall take the necessary measures to ensure that all stocks of those explosives referred to in paragraph 1 of this Article held by its authorities performing military or police functions and that are not incorporated as an integral part of duly authorized military devices are destroyed or consumed for purposes not inconsistent with the objectives of this Convention, marked or rendered permanently ineffective, within a period of fifteen years from the entry into force of this Convention in respect of that State.
4. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives which may be discovered therein and which are not referred to in the preceding paragraphs of this Article, other than stocks of unmarked explosives held by its authorities performing military or police functions and incorporated as an integral part of duly authorized military devices at the date of the entry into force of this Convention in respect of that State.
5. Each State Party shall take the necessary measures to exercise strict and effective control over the possession and transfer of possession of the explosives referred to in paragraph II of Part 1 of the Technical Annex to this Convention, so as to prevent their diversion or use for purposes inconsistent with the objectives of this Convention.
6. Each State Party shall take the necessary measures to ensure the destruction, as soon as possible, in its territory of unmarked explosives manufactured since the coming into force of this Convention in respect of that State that are not incorporated as specified in paragraph II (d) of Part 1 of the Technical Annex to this Convention, and of unmarked explosives which no longer fall within the scope of any other subparagraphs of the said paragraph II.

Article V

1. There is established by this Convention an International Explosives Technical Commission (hereinafter referred to as 'the Commission') consisting of not less than fifteen nor more than nineteen members appointed by the Council of the International Civil Aviation Organization (hereinafter referred to as 'the Council') from among persons nominated by States Parties to this Convention.
2. The members of the Commission shall be experts having direct and substantial experience in matters relating to the manufacture or detection of, or research in, explosives.
3. Members of the Commission shall serve for a period of three years, and shall be eligible for reappointment.
4. Sessions of the Commission shall be convened, at least once a year at the Headquarters of the International Civil Aviation Organization, or at such places and times as may be directed or approved by the Council.
5. The Commission shall adopt its rules of procedure, subject to the approval of the Council.

Article VI

1. The Commission shall evaluate technical developments relating to the manufacture, marking and detection of explosives.
2. The Commission, through the Council, shall report its findings to the States Parties and international organizations concerned.
3. Whenever necessary, the Commission shall make recommendations to the Council for amendments to the Technical Annex to this Convention. The Commission shall endeavour to take its decisions on such recommendations by consensus. In the absence of consensus the Commission shall take such decisions by a two-thirds majority vote of its members.

4. The Council may, on the recommendation of the Commission, propose to States Parties amendments to the Technical Annex to this Convention.

Article VII

1. Any State Party may, within ninety days from the date of notification of a proposed amendment to the Technical Annex to this Convention, transmit to the Council its comments. The Council shall communicate these comments to the Commission as soon as possible for its consideration. The Council shall invite any State Party which comments on, or objects to, the proposed amendment to consult the Commission.
2. The Commission shall consider the views of States Parties made pursuant to the preceding paragraph, and report to the Council. The Council, after consideration of the Commission's report and taking into account the nature of the amendment and the comments of States Parties, including producer States, may propose the amendment to all States Parties for adoption.
3. If a proposed amendment has not been objected to by five or more States Parties by means of written notification to the Council within ninety days from the date of notification of the amendment by the Council, it shall be deemed to have been adopted, and shall enter into force one hundred and eighty days thereafter or after such other period as specified in the proposed amendment for States Parties not having expressly objected thereto.
4. States Parties having expressly objected to the proposed amendment may, subsequently, by means of the deposit of an instrument of acceptance or approval, express their consent to be bound by the provisions of the amendment.
5. If five or more States Parties have objected to the proposed amendment, the Council shall refer it to the Commission for further consideration.
6. If the proposed amendment has not been adopted in accordance with paragraph 3 of this Article, the Council may also convene a conference of all States Parties.

Article VIII

1. States Parties shall, if possible, transmit to the Council information that would assist the Commission in the discharge of its functions under paragraph 1 of Article VI.
2. States Parties shall keep the Council informed of measures they have taken to implement the provisions of this Convention. The Council shall communicate such information to all States Parties and international organizations concerned.

Article IX

The Council shall, in co-operation with States Parties and international organizations concerned, take appropriate measures to facilitate the implementation of this Convention, including the provision of technical assistance and measures for the exchange of information relating to technical developments in the marking and detection of explosives.

Article X

The Technical Annex to this Convention shall form an integral part of this Convention.

Article XI

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State Party may, at the time of signature, ratification, acceptance or approval of this Convention, or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Depositary.

Article XII

Except as provided in Article XI, no reservation may be made to this Convention.

Article XIII

1. This Convention shall be open for signature in Montreal on 1 March 1991 by States participating in the International Conference on Air Law held at Montreal from 12 February to 1 March 1991. After 1 March 1991 the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 3 of this Article. Any State which does not sign this Convention may accede to it at any time.
2. This Convention shall be subject to ratification, acceptance, approval or accession by States. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation

Organization, which is hereby designated the Depository. When depositing its instrument of ratification, acceptance, approval or accession, each State shall declare whether or not it is a producer State.

3. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirty-fifth instrument of ratification, acceptance, approval or accession with the Depository, provided that no fewer than five such States have declared pursuant to paragraph 2 of this Article that they are producer States. Should thirty-five such instruments be deposited prior to the deposit of their instruments by five producer States, this Convention shall enter into force on the sixtieth day following the date of deposit of the instrument of ratification, acceptance, approval or accession of the fifth producer State.
4. For other States, this Convention shall enter into force sixty days following the date of deposit of their instruments of ratification, acceptance, approval or accession.
5. As soon as this Convention comes into force, it shall be registered by the Depository pursuant to Article 102 of the Charter of the United Nations and pursuant to Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article XIV

The Depository shall promptly notify all signatories and States Parties of:

1. each signature of this Convention and date thereof;
2. each deposit of an instrument of ratification, acceptance, approval or accession and date thereof, giving special reference to whether the State has identified itself as a producer State;
3. the date of entry into force of this Convention;
4. the date of entry into force of any amendment to this Convention or its Technical Annex;
5. any denunciation made under Article XV; and
6. any declaration made under paragraph 2 of Article XI.

Article XV

1. Any State Party may denounce this Convention by written notification to the Depository.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depository.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Governments, have signed this Convention.

DONE at Montreal, this first day of March, one thousand nine hundred and ninety-one, in one original, drawn up in five authentic texts in the English, French, Russian, Spanish and Arabic languages.

TECHNICAL ANNEX

PART 1: DESCRIPTION OF EXPLOSIVES

- I. The explosives referred to in paragraph 1 of Article I of this Convention are those that:
 - (a) are formulated with one or more high explosives which in their pure form have a vapour pressure of less than 10^{-4} Pa at a temperature of 25° C;
 - (b) are formulated with a binder material; and
 - (c) are, as a mixture, malleable or flexible at normal room temperature.
- II. The following explosives, even though meeting the description of explosives in paragraph I of this Part, shall not be considered to be explosives as long as they continue to be held or used for the purposes specified below, or remain incorporated as there specified, namely those explosives that:
 - (a) are manufactured, or held, in limited quantities solely for use in duly authorized research, development or testing of new or modified explosives;
 - (b) are manufactured, or held, in limited quantities solely for use in duly authorized training in explosives detection and/or development or testing of explosives detection equipment;
 - (c) are manufactured, or held, in limited quantities solely for duly authorized forensic science purposes; or
 - (d) are destined to be and are incorporated as an integral part of duly authorized military devices in the territory of the producer State within three years after the coming into force of this Convention in respect of that State. Such devices produced in this period of three years shall be deemed to be duly authorized military devices within paragraph 4 of Article IV of this Convention.
- III. In this Part:
 - 'duly authorized' in paragraph II (a), (b) and (c) means permitted according to the laws and regulations of the State Party concerned; and
 - 'high explosives' include, but are not restricted to, cyclotetramethylenetetranitramine (HMX), pentaerythritol tetranitrate (PETN) and cyclotrimethylenetrinitramine (RDX).

PART 2: DETECTION AGENTS

A detection agent is any one of those substances set out in the following Table. Detection agents described in this Table are intended to be used to enhance the detectability of explosives by vapour detection means. In each case, the introduction of a detection agent into an explosive shall be done in such a manner as to achieve homogeneous distribution in the finished product. The minimum concentration of a detection agent in the finished product at the time of manufacture shall be as shown in the said Table.

Table

Name of detection agent	molecular formula	molecular weight	minimum concentration
Ethylene glycol din-itate (EGDN)	$C_2H_4(NO_3)_2$	152	0.2% by mass
2,3-Dimethyl-2,3- din- itrobutane (DMNB)	$C_6H_{12}(NO_2)_2$	176	0.1% by mass
para-Mononitrotoluene (p-MNT)	$C_7H_7NO_2$	137	0.5% by mass
ortho-Mononitrotoluene (o-MNT)	$C_7H_7NO_2$	137	0.5% by mass

Any explosive which, as a result of its normal formulation, contains any of the designated detection agents at or above the required minimum concentration level shall be deemed to be marked.

Schedule 2 LAWS REPEALED

<i>Number and Year of Law</i>	<i>Title or Subject of Law</i>	<i>Extent of Repeal</i>
Act No. 8 of 1911	Explosives Act, 1911	The whole.
Act No. 32 of 1951	Explosives Amendment Act, 1951	The whole.
Act No. 28 of 1954	Explosives Amendment Act, 1954	The whole.