

EXPLOSIVES BILL, 2021

EXPLOSIVES BILL, 2021

ARRANGEMENT OF SECTIONS

Section:

PART I - LICENCING

1. Existing Licence, Permit and Certificate holders to carry on business of manufacturing, selling etc of explosives for a certain period
2. Prohibition of manufacture, storage, possession etc of explosives
3. Application for a Licence, Permit or Certificate
4. Grant of a Licence, Permit or Certificate
5. Screening of applicant
6. Renewal of a Licence, Permit or Certificate
7. Variation, Suspension or Revocation of Licence, Permit or Certificate

PART II - STORAGE AND USE OF EXPLOSIVES

8. Storage and use of explosives in surface, underground mining operations, construction works etc
9. Inspections, Inquiries and Investigations

PART III OFFENCES AND PENALTIES

10. Unlawful importation or exportation of Explosives
11. Unlawful manufacturing of explosives
12. Unlawful usage or storage of explosives
13. Unlawful transportation of explosives
14. Unlawful sales, marketing or purchase of explosives
15. Unlawful possession of explosives
16. Theft of explosives
17. Act of negligence and or conspiracy to steal
18. Offence by a body corporate
19. Other offences
20. Trial of offenders under other laws

PART IV MISCELLANEOUS

21. Regulations
22. Repeal of Cap E18 LFN 2004
23. Interpretation
24. Short title

A BILL

FOR

AN ACT TO REPEAL THE EXPLOSIVES ACT 1964 AND ENACT THE EXPLOSIVES ACT, TO REGULATE THE MANUFACTURE, STORAGE, POSSESSION, USE, DISTRIBUTION, PURCHASE, SALE, TRANSPORTATION, IMPORTATION AND EXPORTATION OF EXPLOSIVES AND FOR RELATED MATTERS

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria—

PART I
LICENCING

1. Existing Licence, Permit and Certificate holders to carry on business of manufacturing, selling etc of explosives for a certain period
From the commencement of this Act, any person, carrying on the business of manufacturing, selling, transportation, importation or exportation of explosives for which Licence, Permit or Certificate has already been granted shall continue to carry on such business -
 - (a) for a period of 6 months; and
 - (b) where before the expiration of the period specified in paragraph (a) of this section, such person makes an application for the grant of a Licence, Permit or Certificate under this Act, until the final disposal of his application.
2. Prohibition of manufacture, storage, possession etc of explosives
 - (1) The Minister may, by an order published in the official gazette, prohibit the manufacture, storage, possession, use, distribution, purchase, sale, transportation, importation or exportation of any explosives except as authorized in the order.

(2) An order issued under subsection (1) of this section, shall be enforced by the Nigeria Custom Service and the Nigeria Police Explosives Ordinance Disposal Unit at the point of entry.

(3) Notwithstanding the provision of subsection (1) of this section, no person who

- (a) is less than 18 years of age;
- (b) has been convicted of an offence involving dishonesty or violence for a term of not less than six months, at any time during a period of five years after the expiration of the sentence; or
- (c) is under a bond for keeping the peace or for good behavior under the Criminal Code,

shall manufacture, store, be in possession, use, distribute, purchase, sell, transport, import or export any explosives.

(4) No person shall sell, deliver or dispatch any explosives to a person whom he knows or has reason to believe at the time of such sale, delivery or dispatch, to be -

- (a) prohibited from the manufacturing, storage, possession, use, distribution, purchase, sale, transportation, importation, exportation of such explosives under subsection (1) of this section; or
- (b) of unsound mind.

3. **Application for a Licence, Permit or Certificate**

(1) An application for a Licence, Permit or Certificate shall be made to the Minister.

(2) An applicant shall pay such application and processing fees as may be prescribed by Regulations made pursuant to this Act.

(3) The Minister shall inform an applicant in writing of his decision to grant or refuse to grant a Licence, Permit or Certificate within 3 months of receipt of an application.

(4) A Licence, Permit or Certificate shall be issued upon payment of the prescribed fee.

- (5) A Licence, Permit or Certificate shall be valid for a period of 1 year from the date of its issuance.
- (6) An applicant who is not satisfied with the decision of the Minister may challenge such decision in the Court.
- (7) An Appeal against the decision of the Minister to the Court shall be filed within 90 days from the date the letter conveying the decisions of the Minister is received by the applicant.

4. Grant of a Licence, Permit or Certificate

- (1) Subject to the provisions of this Act, no person shall undertake any business in respect of explosives unless he has been granted any one or more of the following Licences, Permits or Certificates -
 - (a) Magazine Licence;
 - (b) Manufacturing Licence;
 - (c) Mobile Pump Truck (Bulk Explosives) Licence;
 - (d) Permit to Export Explosives
 - (e) Permit to Import Explosives;
 - (f) Permit to Buy Explosives;
 - (g) Permit to Transfer Explosives;
 - (h) Permit to Mix and Use Ammonium Nitrate and Fuel Oil (ANFO);
 - (i) Special Permit to Blast Outside Quarry;
 - (j) Approved Responsible Person Certificate; or
 - (k) Blasting Certificate.
- (2) A Licence, Permit or Certificate issued under this Act shall be subject to such conditions as may be specified in the Licence, Permit or Certificate or prescribed by Regulations made under this Act.

5. Screening of applicant

- (1) An applicant for a Licence, Permit or Certificate under this Act shall upon the request of the Minister be screened by the appropriate Security Agency to carry out such screening.
- (2) The appropriate Security Agency shall screen the applicant and furnish the Minister with a report in respect of the following -
 - (a) whether the applicant for the grant or renewal of a Licence, Permit or Certificate has been found guilty or convicted of an offence in any part of Nigeria or elsewhere;
 - (b) whether the applicant is the subject of a firearms prohibition order within the meaning of the firearms Act Cap F.28 LFN, 2004;
 - (c) whether the applicant is of good character or repute;
 - (d) whether the applicant has a history of violence or threat to violence;
 - (e) whether the applicant has good reason for requiring the Licence, Permit or Certificate;
 - (f) whether the applicant can be trusted to handle explosives in the manner authorized by the Licence, Permit or Certificate without any danger to public peace, safety and security; and
 - (g) such other matters as the Minister may request or the Security Agency may consider necessary to bring to the notice of the Minister.

6. Renewal of a Licence, Permit or Certificate

- (1) An application for the renewal of a Licence, Permit or Certificate shall be made to the Minister at least 1 month before the expiration of the Licence, Permit or Certificate.
- (2) The application shall be accompanied by evidence of payment of the prescribed Licence, Permit or Certificate renewal fee and all other requirements prescribed under the Regulations made under this Act.

7. Variation, Suspension or Revocation of Licence, Permit or Certificate

- (1) The Minister may suspend or revoke a Licence, Permit or Certificate where -

- (a) the Licence, Permit or Certificate holder has contravened any of the provisions of this Act, Regulations made under this Act or any other law;
 - (b) the Licence, Permit or Certificate was obtained by the suppression of material evidence which if brought to the notice of the Minister, would have persuaded him from granting the Licence, Permit or Certificate;
 - (c) any fee or levy due to be paid by the Licence, Permit or Certificate holder has not been paid;
 - (d) the Licence, Permit or Certificate holder has violated any safety requirements; or
 - (e) in the opinion of the Minister, it is in the interest of public safety or security for the Licence, Permit or Certificate to be varied, suspended or revoked.
- (2) A Licence, Permit or Certificate holder whose Licence, Permit or Certificate is varied, suspended or revoked shall be informed of such variation, suspension or revocation.

PART II
STORAGE AND USE OF EXPLOSIVES

8. Storage and use of explosives in surface, underground mining operations, construction works etc

- (1) A surface magazine shall be surrounded by a fence approved by the Minister accessible through a gate which shall be kept securely locked when not in use.
- (2) A surface magazine shall be erected in accordance with the approved plan and specifications and other such conditions as the Minister may determine.
- (3) An explosives magazine shall be in the care of an approved person acquainted with the nature of explosives, whose name shall be entered into the explosives index register.
- (4) The person referred to in subsection (3) of this section shall be responsible for -
 - (a) the proper receipt, storing, and distribution of the explosives; and
 - (b) Keeping full particulars of all receipts and deliveries in the explosives index register which shall be kept in the magazine.
- (5) Underground mining operation shall, where necessary be fitted with a well regulated magazine for the storage, transportation and use of explosives.
- (6) An underground explosives magazine shall be in the custody of an approved responsible person acquainted with the nature of explosives, whose names shall be entered in the explosives index register.
- (7) The person referred to in subsection (6) of this section shall be responsible for -
 - (a) the proper receipt, storage and distribution of the explosives; and
 - (b) keeping full particulars of all receipts and deliveries in the explosives index register, which shall be kept in the magazine.
- (8) Any construction work that requires the use of explosives shall be fitted with a well regulated storage box in the custody of an approved person.

- (9) Explosives shall be in care of an approved person certified to have basic knowledge as to the use of explosives, whose name shall be entered into the explosives index register.
- (10) The person referred to in sub-section (9) of this section shall be responsible for-
 - (a) the proper receipt, storage, and distribution of the explosives; and
 - (b) keeping full particulars of all receipts and deliveries in the explosives index register which shall be kept in a magazine.
- (11) Contract blasting shall be conducted by a registered company which shall –
 - (a) have in its employment a mining engineer registered by Council of Nigerian Mining Engineers and Geoscientists; and
 - (b) fulfill such requirements as to enable it purchase, store, transfer explosives, conduct blasting operations in Mines, Quarries and such other civil engineering locations in accordance with this Act and Regulations made under this Act.

9. Inspections, Inquiries and Investigations

- (1) The Minister shall make Regulations consistent with this Act authorizing any officer either by name or by virtue of his office to –
 - (a) enter, inspect and examine any place, aircraft, carriage or vessel in which an explosives is being manufactured, stored, used, sold, transported, imported or exported under a Licence, Permit or Certificate granted under this Act;
 - (b) enter into any place where he has reason to believe that an explosives is being manufactured, stored, used, sold, transported, imported or exported in contravention of this Act or Regulations made under this Act;
 - (c) take samples, seize, detain or remove any explosives or its components found in the premises; and

- (d) arrest anyone found in such place or premises and if necessary destroy such explosives or its components.
- (2) The Provisions of Part 13 of the Criminal Procedure Act, Cap. C41, Laws of the Federation of Nigeria, 2004 relating to search warrants under that Act shall, so far as the same are applicable, apply to searches by persons authorized by Regulations made under this section.
- (3) Where an accident occurs in any place where explosives are manufactured, stored, sold, used or in any aircraft, carriage or vessel conveying an explosives resulting in the loss of human life, serious injury to person or property, the occupier of the place or the master of the aircraft or vessel shall within such a time and in such manner as may be prescribed by Regulation made, under this Act give notice thereof to the -
- (a) Minister;
 - (b) Inspector of Explosives in charge of the place where the accident occurred;
 - (c) officer in charge of the nearest Police Station.
- (4) The Minister may make Regulations to -
- (a) regulate the procedure at inquires under this section;
 - (b) ensure that parties under investigation are given fair hearing;
 - (c) prescribe the manner in which and the time within which the notice under subsection (3) of this section shall be given.
- (5) Where an accident occurs in connection with any building, place, aircraft, carriage or vessel under the control of a Licence, Permit or Certificate holder, the appointed Inspector of Explosives in conjunction with the Nigeria Police Explosives Ordinance Disposal Unit and the Department of State Services shall investigate the cause of such accident.
- (6) The appropriate investigating officers appointed under sub-section.1 of this section shall submit a report of its investigation to the Minister stating the

causes of the accident and its circumstances.

- (7) Theft of explosives and explosives precursors should be reported by the approved person to the Mines Inspectorate Department and the nearest Police Station for investigation and possible prosecution.

10. Manufacturing, possession etc of explosives by the Armed Forces

- (1) Nothing in this Act shall apply to the manufacturing, possession, use, transportation and importation of any explosives by-
- (a) Armed Forces of the Federal Republic of Nigeria;
 - (b) Defence Factories; and
 - (c) any person employed by the Federal Government in execution of this Act.
- (2) The Minister may by an order in the official gazette, exempt absolutely or subject to such condition, any explosives or any person or class of persons from all or any of the provisions of this Act or Regulations made under this Act.

PART III
OFFENCES AND PENALTIES

11. Unlawful importation or exportation of Explosives

Any person, who unlawfully imports any explosives into Nigeria or exports explosives from Nigeria commits an offence and is liable on conviction to life imprisonment without option of fine.

12. Unlawful manufacturing of explosives

Any person, who unlawfully manufactures any explosives, commits an offence and is liable on conviction to life imprisonment without option of fine.

13. Unlawful usage or storage of explosives

Any person, who unlawfully uses or stores any explosives, commits an offence and is liable on conviction to a fine of not less than 40 million naira or imprisonment for a term of not less than 20 years or both.

14. Unlawful transportation of explosives

Any person, who unlawfully transports any explosives, commits an offence and is liable on conviction to a fine of not less than 20 million naira or imprisonment for a term of not less than 10 years or both.

15. Unlawful sales, marketing or purchase of explosives

Any person, who unlawfully sells or markets any explosives commits an offence and is liable on conviction to a fine of not less than 40 million naira or imprisonment for a term of not less than 20 years or both.

16. Unlawful possession of explosives

Any person, who is in unlawful possession of any explosives, commits an offence and is liable on conviction to a fine of not less than 20 million naira or imprisonment for a term of not less than 10 years or both.

17. Theft of explosives

Any person who steals any explosives from a store, magazine, cargo, vessel, or aircraft while in stock or during transit or blasting commits an offence and shall be liable on conviction to life imprisonment without option of fine.

18. Act of negligence and or conspiracy to steal

Any person (s) who negligently allows any explosives to be stolen from any store, magazine, cargo, vessel, or aircraft commits an offence and is liable on conviction to a fine of not less than 20 million naira or imprisonment for a term of not less than 10 years or both.

19. Offence by a body corporate

(1) Where an offence under this Act is committed by a body corporate, any person who, at the time the offence was committed, was in charge of or responsible for the conduct of the business of the body corporate shall be charged with the same offence as the body corporate and liable on conviction to –

- (a) a penalty of not less than 40 million naira; or
- (b) Imprisonment for a term of not less than 20 years, or both.

(2) Where an offence under this section is proved to have been committed with the connivance of or is attributable to any neglect on the part of any officer of the corporate body, such officer shall be deemed to have committed the offence and is liable on conviction to a fine of not less than 40 million naira or imprisonment for a term of not less than 20 years or both.

(3) It shall be a defence for a person charged under this section where such person proves that the offence for which he was charged was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

20. Other offences

- (1) Any person, who fails to give notice or report an accident under section 9(3) of this Act, commits an offence and is liable on conviction to a fine of not less than 10 million naira or imprisonment for a term of not less than 5 years.
- (2) Where, for an offence committed under section 11 of this Act, the importation or exportation is done –
 - (a) through the sea, the owner and master of the vessel; or
 - (b) by air, the owner and master of the aircraft,shall be liable on conviction to a fine of not less than 80 million naira.
- (3) The court may for the purpose of compelling the payment of the fine referred to in subsection (2) of this section by an owner or master of an aircraft or vessel, direct that the aircraft or vessel be levied by Distress or Sale.
- (4) Any person who contravenes the provisions of any Regulations made under this Act, commits an offence and is liable on conviction to such penalties as may be prescribed under the Regulations.
- (5) Where a person is convicted of an offence under this Act or Regulations made under this Act, the court may direct that the explosives, ingredients or substances used in the commission of the offence and receptacle containing such explosives, ingredients or substances be forfeited to the Federal Government.
- (6) Where a Licence, Permit or Certificate holder contravenes any of the provisions of this Act, Regulations made under this Act or any other law, the court may, in addition to any penalty stipulated for the offence, make such an order for the variation, suspension or revocation of the Licence, Permit or Certificate holder's Licence, Permit or Certificate.

21. Trial of offenders under other laws

Nothing in this Act shall prevent any person from being prosecuted under any other law for an act or omission which constitutes an offence under this Act from being liable under that other law to any other or higher punishment or penalty than that provided under this Act, provided no person shall be punished twice for the same offence.

PART IV
MISCELLANEOUS

22. Regulations

- (1) The Minister may, make Regulations generally to give full effect to the provisions of this Act.
- (2) Regulations made under sub-section (1) of this section may provide for the -
 - (a) fees to be charged for a Licence, Permit or Certificate;
 - (b) manner in which applications for a Licence, Permit or Certificate shall be made and the matters to be specified in such applications;
 - (c) conditions upon which a Licence, Permit or Certificate shall be granted;
 - (d) form in which applications shall be made;
 - (e) circumstances under which fees may be refunded;
 - (f) total quantity of explosives that a Licence, Permit or Certificate holder can purchase in a given period of time;
 - (g) fees to be charged in connections with the manufacturing, transportation, importation or exportation of explosives;
 - (h) procurement of End User Certificate (EUC) from the Office of the National Security Adviser (NSA) to clear imported explosives;
 - (i) security requirement of explosives during transportation and around the storage facilities to be provided by the Nigerian Police Force - Explosives Ordinance Disposal Unit;
 - (j) exemptions absolutely of any persons or class of persons from the operations of the Regulations;
 - (k) procedure for vetting by the Department of State Services;
 - (l) use of permissible explosives for coal mining; and
 - (m) accountability and establishment of a framework for the control of Ammonium Nitrate.

23. Repeal of Cap E18 LFN 2004

- (1) The Explosives Act Cap E18 LFN 2004 is repealed.
- (2) Any person who, before the commencement of this Act, was a holder of a Licence, Permit or Certificate under the repealed Act shall continue to hold such Licence, Permit or Certificate in accordance with the provisions of section 1 of this Act.

24. Interpretation

In this Act, unless the context otherwise requires-

"Aircraft" means any machine which can derive support in the atmosphere from the reaction of the air, other than the balloons, whether fixed or free, airships, kits, gliders and flying machines;

"Appropriate Security Agencies" means the Nigeria Police Explosive Ordinance Disposal Command and the Department of State Security Services.

"Carriage" includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods or passenger by land, in whatever manner the same may be propelled;

"Court" means Federal High Court;

"Explosives" includes, Nitroglycerine, Nitro glycol, Nitrocellulose, Di-nitro-toluene (DNT), Tri-nitro-toluene (TNT), Tri-nitro-phenol (TNP), Di-nitro-phenol, Tri-nitro-restrame, Penta-erthritol -tetra nitrate (PETN), Cyclo-trimethylene-trinitramine (RDX), Lead azide, Lead Styhynate, Gelignite, Seismic shaped charges, safety fuse, Detonating cord, Ammonium nitrate, Hydrocarbon, Non-detonating expansive mortar, Fulminate of mercury or any other Metal diazo-di-nitrophenol, Coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fuses, detonators of all description and every adaptation of preparation of an explosives as defined in this clause;

"Explosives Magazine" means any building licensed under this Act for the storage of explosives.

"Export" means taking out to a place outside Nigeria by land, sea or air;

"Import" means to bring in from a place outside Nigeria by land, sea or air;

"Manufacture" in relation to an explosives includes the process of -

- (a) dividing the explosives into its component parts or otherwise breaking up or unmaking the explosives, or making fit for use any damaged explosives, and
- (b) re-making, altering or repairing the explosives;

"Master"

- (a) in relation to any vessel or aircraft means any person, other than a pilot, harbor master, assistant harbor master or berthing master, having for the time being in charge or control of such vessel or aircraft, as the case may be; and
- (b) in relation to any boat belonging to a ship, means the master of that ship;

"Marked" in relation to a plastic explosives and accessories means the introduction of a detection agent into the plastic explosives in accordance with the International Technical Convention;

"Minister" means Minister responsible for Mines and Steel Development;

"Premises" includes a place, aircraft, carriage or vessel;

"Prescribed" means as by Regulations made under this Act;

"Vessel" includes any ship, boat, sailing vessel, or other description of vessel used in navigation whether propelled by cars or otherwise and anything made for the conveyance, mainly by water, of human beings or of goods and a caisson; and

"EUC" means End User Certificate to clear imported explosives.

23. Short title

This Act may be cited as the Explosives Act, 2021.