

**A Bill
entitled**

AN ACT to amend the Explosives Ordinance, Cap. 33.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

1. The short title of this Act is the Explosives Ordinance (Amendment) Act, 2008 and this Act shall be read and construed as one with the Explosives Ordinance, hereinafter referred to as “the principal law”.

Short title.

Cap. 33.

2. In article 2 of the principal law immediately after the definition of “explosive” there shall be inserted the following new definition:

Amendment of article 2 of the principal law.

“factory” means any building or premises or any part thereof wherein explosives are manufactured or wherein any process of such manufacture is carried out;”.

3. Sub-article (2) of article 3 of the principal law shall be amended as follows:

Amendment of article 3 of the principal law.

(a) in the proviso thereto, for the words “for sale.”, there shall be substituted the words “for sale:”; and

(b) immediately after the proviso thereto as amended, there shall be added the following new proviso:

“Provided further that upon a reasonable suspicion that a serious breach of the provisions of this Ordinance has occurred, the Commissioner of Police shall have the right to close a gunpowder factory or any other similar factory for a period not exceeding one month, so however that if at any time criminal proceedings are commenced

relating to such factory for the breach of any provision of this Ordinance, the court may, pending the proceedings, of its own motion or at the request of the prosecution, order such factory to be closed until the termination of the proceedings by a final judgment.”.

Addition of new articles to the principal law.

4. Immediately after article 26 of the principal law there shall be added the following new articles:

“Arrest without warrant.

26A. Any police officer may arrest without warrant any person who has committed, or attempted to commit, or is reasonably suspected by the officer of having committed or attempted to commit, an offence against the provisions of this Ordinance, or of any regulations made thereunder, if he has reasonable ground for believing that that person will abscond unless arrested, or if the name and address of that person are unknown to and cannot be ascertained by him.

Suspension of licence.

26B. The Commissioner of Police may, saving the provisions of any other existing law, suspend any licence in the course of any proceedings for an offence against the provisions of this Ordinance.”.

Amendment of article 27 of the principal law.

5. In article 27 of the principal law for the words “be liable to imprisonment for a term not exceeding six months or to a fine (*multa*) of not less than forty-six euros and fifty-nine cents (46.59) and not more than four hundred and sixty-five euros and eighty-seven cents (465.87),” there shall be substituted the words “be liable to imprisonment for a term from two to five years or to a fine (*multa*) of not less than five thousand euro (€5,000) and not more than twenty-five thousand euro (€25,000),”.

Amendment of article 29 of the principal law.

6. Article 29 of the principal law shall be amended as follows:

(a) the present provision thereof shall be numbered as sub-article (1) thereof and for the words therein “be liable to imprisonment for a term not exceeding six months or to a fine (*multa*) of not less than forty-six euros and fifty-nine cents (46.59) and not more than four hundred and sixty-five euros and eighty-seven cents (465.87),” there shall be substituted the words “be liable to imprisonment for a term from six months to two years or to a fine (*multa*) of not less than fifteen thousand euro (€15,000) and not more than fifty thousand euro (€50,000),”;

(b) immediately after sub-article (1) thereof as

renumbered there shall be inserted the following:

“(2) Where gunpowder or any other substance as referred to in sub-article (1) and which are kept, prepared, sold, offered for sale or delivered as provided in sub-article (1) cause an explosion in consequence whereof the death of an other person or bodily harm to another person ensues, the person who kept, prepared, sold, offered for sale or delivered the same gunpowder or other substance shall, upon conviction, be liable as follows:

(a) where the death of another person has ensued, to the punishment of imprisonment not exceeding four years;

(b) where a bodily harm which produces any of the effects mentioned in article 218 of the Criminal Code has ensued, to the punishment of imprisonment not exceeding two years or to a fine (*multa*) of not less than eight thousand euro (€8,000) but not exceeding eighty thousand euro (€80,000) or to both such fine and imprisonment;

(c) where a bodily harm which does not produce any of the effects mentioned in article 218 of the Criminal Code has ensued, to the punishment of imprisonment not exceeding one year or to a fine (*multa*) of not less than two thousand five hundred euro (€2,500) but not exceeding twenty thousand euro (€20,000) or to both such fine and imprisonment.”.

7. In article 30 of the principal law for the words “be liable to imprisonment for a term not exceeding one month or to a fine (*multa*) of not less than twenty-three euros and twenty-nine cents (23.29) and not more than one hundred and sixteen euros and forty-seven cents (116.47),” there shall be substituted the words “be liable to imprisonment for a term from three months to one year or to a fine (*multa*) of not less than two thousand euro (€2,000) and not more than twenty thousand euro (€20,000),”.

Amendment of article 30 of the principal law.

8. In article 32 of the principal law:

(a) for the words “in article 23(2)” there shall be substituted the words “in articles 8 and 23(2)”;

(b) for the words “in that article” there shall be substituted the words “in those articles”; and

Amendment of article 32 of the principal law.

(c) for the words “be liable to a fine (*ammenda*) or to imprisonment for a term not exceeding one month.” there shall be substituted the words “be liable to a fine (*multa*) not exceeding one thousand euro (€1,000) or to imprisonment not exceeding six months, or to both such fine and imprisonment.”.

Amendment of article 33 of the principal law.

9. In sub-article (2) of article 33 of the principal law:

(a) for the words “not less than fifty cents,” there shall be substituted the words “not less than one hundred and fifty euro (€150),” and

(b) for the words “three days” there shall be substituted the words “one month”.

Deletion of article 39 of the principal law.

10. Article 39 of the principal law shall be deleted.

Addition of new articles to the principal law.

11. Immediately after article 40 of the principal law there shall be added the following new articles:

“Cancellation of licence.

40A. On conviction for an offence under this Ordinance, the court may, at the request of the prosecution or on its own motion, cancel any licence held by the offender in respect of any factory, shop or other premises wherein or within the precincts whereof the offence was committed, and, in the case of an offence committed through the use of a vehicle, both the offender’s driving licence and any licence held by him in respect of the vehicle to which the offence relates:

Provided that nothing in this article shall be deemed to affect any powers of the Commissioner of Police under any other law to cancel or suspend any licence.

Applicability of the Probation Act. Cap. 446.

40B. The provisions of article 24 of the Probation Act concerning the power of the court to order the offender to pay damages shall, *mutatis mutandis*, also apply whenever a person is sentenced upon conviction for an offence against the provisions of this Ordinance.”.

Amendment of article 42 of the principal law.

12. In article 42 of the principal law for the words “Except in the case of the offence referred to in article 26, any proceedings for an offence against this Ordinance or any regulations made thereunder, shall be instituted” there shall be substituted the words “Proceedings for an offence against any regulations made under this Ordinance, in so far as they are not accompanied by an offence against this

Ordinance, shall be instituted”.

13. Immediately after article 43 of the principal law, there shall be added the following new article:

Addition of new article to the principal law.

“Reduction of punishment.

43A. Where, in respect of a person found guilty of an offence against this Ordinance, the prosecution declares in the records of the proceedings that such person has helped the Police to apprehend the person or persons who supplied him with the explosives, or the person found guilty as aforesaid proves to the satisfaction of the court that he has so helped the Police, the punishment shall be diminished, as regards imprisonment by one or two degrees, and as regards any pecuniary penalty by one-third and one-half respectively.”.

14. Article 44 of the principal law shall be substituted by the following new article:

Amendment of article 44 of the principal law.

“Punishment in the case of a second offence.

44. Where a person, who has been convicted of an offence against the provisions of this Ordinance, or of any regulations made thereunder, commits a second like offence, he shall be liable, on conviction, to the punishment for the offence increased by two degrees, and on a third or subsequent conviction, by three degrees.”.

15. Immediately after article 45 of the principal law there shall be inserted the following new articles:

Addition of new articles to the principal law.

“Forfeiture of property.

45A. (1) Where an offence has been committed against the provisions of this Ordinance, the court shall, in addition to any other punishment, in its sentence or at any time thereafter, at the request of the prosecution:

(a) where any immovable property has been used for the manufacture, sale, exposition for sale, or storage of explosives as described in the bill of indictment or in the charge, order the forfeiture in favour of the Government of any real title which the offender holds on such immovable property;

(b) where the offender is not the absolute owner but holds any other real title on the immovable property, or has a title, other than a real title, in virtue of which he has the control of or a right of access to such property, the court shall order the offender to pay a fine (*multa*) of not less than ten thousand euro (€10,000) but not exceeding sixty thousand euro (€60,000) as the court shall determine after taking into account the value of the immovable property and the value of the real title thereon, if any, forfeited as aforesaid;

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(c) saving the provisions of the Criminal Code, make an order whereby the provisions of paragraphs (a) and (b) shall be applied, *mutatis mutandis*, to or in respect of any vessel or vehicle, used for the keeping, storing or conveyance of, or for the selling or dealing in, explosives; and

(d) order the forfeiture in favour of the Government of the immovable property used for the manufacture, sale, exposition for sale, or storage of explosives, of the person so found guilty even if the immovable property has, since the offender was charged, passed into the hands of third parties.

(2) Any decision as is mentioned in sub-article (1) ordering the forfeiture of immovable property or of any title to such property shall be deemed to be and shall be enforceable as a civil judgment transferring that title in favour of the Government, and the Attorney General shall, for the purposes of article 239 of the Code of Organization and Civil Procedure, be considered as the interested party that may obtain the registration of such transfer.

Suspension order.

45B. (1) Where a person is charged under this Ordinance or under regulations made thereunder, and such person is a person in possession of a licence, permit or authority issued to him by a competent authority in or in connection with the exercise of any art, trade, calling or other occupation and the offence is committed in a place licenced under this Ordinance, or under any other law, the court may make an order, hereinafter referred to as a “suspension order”, suspending such licence, permit or authority.

(2) The suspension order shall remain in force for the whole duration of the proceedings until final judgment.

(3) Any person who does any act for the doing of which a licence, permit or authority is required under any law and such act is done when that licence, permit or authority had been suspended by virtue of a suspension order shall be deemed to have so acted without the required licence, permit or authority.

Non-applicability.
Cap. 9.
Cap. 446.

45C. The provisions of articles 21 and 28A of the Criminal Code and the provisions of the Probation Act shall not be applicable in respect of any person convicted of an offence under this Ordinance.

Compensation.

45D. On conviction for an offence under the provisions of this Ordinance or of any regulations made thereunder, the court may order the offender to pay to any injured party such sum of money that may be determined by the court in that direction as compensation for any such loss as aforesaid or for any damages or other injury or harm caused to such party by or through the offence.”.

16. In article 46 of the principal law for the words “not exceeding four euros and sixty-six cents (4.66)” there shall be substituted the words “of not less than twenty-five euro (€25) and not more than one hundred euro (€100).”.

Amendment of article 46 of the principal law.

17. Immediately after article 226A of the Criminal Code there shall be added the following new article:

Addition of new article to the Criminal Code, Cap.9

“Explosive fluid or substance.

226B. Where any of the offences in articles 225, 226 and 226A has been committed by any explosive fluid or substance, the punishment laid down for the offence shall be increased by two to three degrees.”.

Objects and Reasons

The object of this Bill is to make stricter provisions and to increase penalties for offences under the Explosives Ordinance according to the recommendations of the Pyrotechnics Commission Report.
