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EXPLOSIVES ACT 15 OF 2003

[ASSENTED TO 19 DECEMBER 2003]

[DATE OF COMMENCEMENT: TO BE PROCLAIMED]

(English text signed by the President)

as amended by

Criminal Law (Sexual Offences and Related Matters) Amendment Act
32 of 2007

also amended by

Criminal Law (Forensic Procedures) Amendment Act 6 of 2010
[with effect from a date to be proclaimed - see PENDLEX]

ACT

**To provide for the control of explosives; and to provide for matters
connected therewith.**

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1 Definitions

[NB: Definitions of '**authorised person**', '**body-prints**', '**child**' and '**comparative search**' have been inserted by s. 9 of the Criminal Law (Forensic Procedures) Amendment Act 6 of 2010, a provision which will be put into operation by proclamation. See PENDLEX.]

In the Act, unless the context indicates otherwise-

'authorised explosive' means any explosive listed in the regulations as an authorised explosive;

'broker' means any person who acts for others in negotiating or arranging contracts in respect of purchases, sales or the transfer of explosives in return for a fee, commission or other consideration;

'Chief Inspector' means the Chief Inspector of Explosives appointed by the Minister in terms of section 4 (1);

'Convention' means the United Nations Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal Convention), 1991, as set out in Schedule 3;

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

'detonate' means the initiation of an explosive by means of a detonator, shockwave or other means of initiation;

'explosion' means a chemical reaction involving the production of gases at such a speed, temperature and pressure as is likely to cause damage to the surroundings;

'explosive' means-

- (a) a substance, or a mixture of substances, in a solid or liquid state, which is capable of producing an explosion;
- (b) a pyrotechnic substance in a solid or liquid state, or a mixture of such substances, designed to produce an effect by heat, light, sound, gas or smoke, or a combination of these, as the result of non-detonative self-sustaining exothermic chemical reaction, including pyrotechnic substances which do not evolve gases;
- (c) any article or device containing one or more substances contemplated in paragraph (a);
- (d) any plastic explosive; or
- (e) any other substance or article which the Minister may from time to time by notice in the *Gazette* declare to be an explosive;

'explosives magazine' means any building or part thereof, or any structure, licensed under this Act for the storage of explosives;

'explosives manufacturing site' means any site licensed under this Act for the manufacture of explosives;

'fireworks' means any pyrotechnic substance contemplated in paragraph (b) of the definition of 'explosives' which-

- (a) is manufactured for the purposes of amusement or entertainment; and
- (b) is divided into such classes as may be prescribed;

'imitation', in respect of an explosive, means anything that has the appearance

of an explosive, but which is not capable of operating as such and cannot by superficial examination be identified as an imitation;

'inspector' means any inspector of explosives appointed under section 4 (2);

'manufacture' means the making or processing of any explosive, and includes the division of any explosive into its components by any process, the conversion of any kind of explosive into another kind and the alteration, testing or reworking of any explosive;

'marking', 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;

'Minister' means the Minister of Safety and Security;

'plastic explosive' means any explosive in flexible, malleable, elastic or sheet form which is-

- (a) 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) formulated with any binder material; and
- (c) as a mixture, flexible or malleable, at normal room temperature;

'premises' means any land, place, road, harbour, open water, river, building, structure, tent, ship, boat, aircraft, railway truck, cart, van or other vehicle or vessel;

'prescribed' means prescribed by regulation;

'regulation' means any regulation made or regarded as having been made under this Act;

'suitable person' means a person-

- (a) who is 18 years or older;
- (b) is a South African citizen, the holder of a permanent South African residence permit or the holder of a valid work permit;
- (c) is of stable mental condition and is not inclined to violence;
- (d) is not dependent on any substance which has an intoxicating or narcotic effect;
- (e) has not been convicted of any offence under this Act or the Explosives Act, 1956 (Act 26 of 1956), and sentenced to imprisonment without the option of a fine;

'this Act' includes the regulations;

'unauthorised explosive' means any explosive other than an authorised explosive;

'unmarked plastic explosive' means a plastic explosive that-

- (a) does not contain a detection agent; or
- (b) at the time of manufacture, does not contain the required minimum concentration level of a detection agent set out in the Table in Part 2 of the Technical Annex to the Convention.

CHAPTER 1
APPLICATION OF ACT AND AMENDMENT OF SCHEDULE 3 (ss 2-3)

2 Application of Act

(1) No person may possess explosives or carry out any activity relating to explosives unless he or she holds a licence, permit or authorisation issued in terms of this Act.

(2) Subject to section 26, this Act does not apply to the-

- (a) importation, exportation, storage, use, manufacture or transportation of any explosives by the South African National Defence Force or the South African Police Service or to any member of the South African National Defence Force or the South African Police Service while performing official duties and acting in accordance with a lawful instruction;
- (b) importation, exportation, storage, use, manufacture or transportation of any explosives by a defence force or police force of any country or any multinational or international defence force or policing agency, which the Minister, after consultation with the Ministers of Defence and of Foreign Affairs, by notice in the *Gazette* exempts from the provisions of this Act, or to any member of such force, service or agency while on official duty;
- (c) loading or reloading of ammunition as contemplated in section 93 of the Firearms Control Act, 2000 (Act 60 of 2000);
- (d) transfer, storage, transportation, manufacturing, destruction, distribution or any other use of explosives in so far as those activities relate to occupational health or occupational safety and are governed by or under the Mine Health and Safety Act, 1996 (Act 29 of 1996), or the Occupational Health and Safety Act, 1993 (Act 85 of 1993).

(3) (a) The Minister may exempt a person from any or all of the provisions of this Act, or from a notice or instruction issued under this Act, if such provision or provisions relate to an occupational health or occupational safety matter and such matter is regulated under the Mine Health and Safety Act, 1996 (Act 29 of 1996), or the Occupational Health and Safety Act, 1993 (Act 85 of 1993).

(b) Any such exemption may be-

- (i) general or particular;
- (ii) for any period;
- (iii) subject to any conditions aimed at achieving the objectives of this Act;
- (iv) amended or withdrawn at any time.

(4) In the event of any inconsistency between this Act and any other law in force at the commencement of this Act, other than the Constitution, this Act prevails.

3 Amendment of Schedule 3

The Minister may from time to time by notice in the *Gazette* amend Schedule 3 to reflect any changes made to the Convention if those changes are binding on the Republic in terms of section 231 of the Constitution.

CHAPTER 2 APPOINTMENT AND FUNCTIONS OF INSPECTORS AND DISPOSAL OF EXPLOSIVES (ss 4-9)

4 Appointment of Chief Inspector and inspectors

(1) The Minister may appoint a member of the South African Police Service as the Chief Inspector of Explosives.

(2) The Chief Inspector may, in consultation with the National Commissioner contemplated in section 6 (1) of the South African Police Service Act, 1995 (Act 68 of 1995), appoint any member of the South African Police Service as an inspector for a specified area.

(3) The Chief Inspector may delegate any power conferred upon him or her or assign any duty imposed upon him or her in terms of this Act to an inspector.

5 Inspections

(1) An inspector may at any time when any activity in respect of explosives takes place at an explosives manufacturing site, an explosives magazine or a place contemplated in section 14 (4) enter such site, magazine or place in order to-

- (a) inspect security arrangements at the site, magazine or place;
- (b) investigate compliance with this Act;
- (c) require the person in control of the site, magazine or place to produce any record, book or other document relating to safety and security at the site, magazine or place for inspection or for the purposes of obtaining copies thereof or extracts therefrom;
- (d) examine any explosive or other substance, material or related article found on or in the site, magazine or place;
or
- (e) obtain a sample of any explosive or substance in or on the site, magazine or place for the purposes of analysis and testing.

(2) The inspector must show proof of his or her identity and authority when requested to do so by the person in control of the site, magazine or place in question.

(3) If, upon any inspection, an inspector discovers that any method of work, packing or storage that is being used is in contravention of this Act or is likely to endanger the safety and security of any person, the inspector may demand the immediate discontinuation of the method or may take such steps as may be necessary to ensure the safety and security of any person or property.

6 Entry and search of premises

(1) An inspector may, on the authority of a warrant issued in terms of subsection (2)-

- (a) in order to obtain evidence, enter any premises where he or she has reason to believe that any provision of this Act has been or is being contravened;
- (b) direct the person in control of or any person employed at the premises-
 - (i) to deliver any book, record or other document that pertains to the investigation and is in the possession or under the control of that person;
 - (ii) to furnish such information as he or she has with regard to the matter; or
 - (iii) to render such assistance as the inspector requires in order to enable him or her to perform his or her functions under this Act;
- (c) inspect any book, record or other document and make copies thereof or excerpts therefrom;
- (d) examine any explosive or other material, substance or article found on the premises;
- (e) take samples of any explosive, material, substance or article for the purposes of testing, examination, analysis and classification;
- (f) seize any explosive, material, substance, book, article, record or other document which might be relevant to a prosecution under this Act and keep it in his or her custody, but the person from whom any book, record or document has been taken may, at his or her own expense and under supervision of the inspector, make copies thereof or excerpts therefrom.

(2) A warrant referred to in subsection (1) must be issued by a magistrate or a judge of the High Court who has jurisdiction in the area where the premises in question are situated and may only be issued if it appears from information on oath or solemn declaration that there are reasonable grounds to believe that a provision of this Act has been or is being contravened and must specify which of the acts mentioned in subsection (1) may be performed by the inspector.

(3) An inspector executing a warrant issued in terms of this section must immediately before commencing the execution-

- (a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix a copy to a prominent place on the premises; and

(b) on request supply such person with particulars of his or her authority to execute the warrant.

(4) (a) An inspector may not enter upon or search any premises until he or she has audibly demanded admission to the premises and has notified the purpose of his or her entry, unless he or she is, on reasonable grounds, of the opinion that such demand and notification will defeat the purpose of the search.

(b) An inspector, on the authority of a warrant issued in terms of subsection (2), may use such force as may reasonably be necessary to overcome resistance to his or her entry or search.

(c) Any entry and search in terms of this section may only be executed by day, unless the execution thereof by night is justifiable and necessary.

(5) A warrant contemplated in this section remains in force until-

(a) it has been executed;

(b) it is cancelled by the person who issued it, or if such person is not available, by any person with similar authority;

(c) one month from the date of its issue; or

(d) the purpose for which the warrant was issued no longer exists,

whichever occurs first.

(6) An inspector may without a warrant enter upon any premises and search for, seize and remove anything referred to in subsection (1) if-

(a) the person who is competent to do so consents to such entry, search, seizure and removal; or

(b) there are reasonable grounds to believe that-

(i) a warrant would be issued to the inspector if he or she applied for such warrant; and

(ii) the delay in obtaining such warrant would defeat the purpose of the search.

(7) If, during the execution of a warrant or during a search in terms of this section, a person claims that an article or document found upon or in the premises in question contains privileged information and refuses the inspection of such article or document, the inspector may request the clerk of the court or Registrar of the High Court having jurisdiction to attach and remove that article or document for safe custody until a court of competent jurisdiction has made a ruling on the question as to whether or not the information in question is privileged.

(8) (a) Subject to paragraphs (b), (c), (d) and (e), any explosives seized in terms of this section must be dealt with as contemplated in Chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(b) If the explosives cannot be moved due to the large volume thereof, the inspector must ensure that the explosives are guarded until they are disposed of in terms of this Act or the Criminal Procedure Act, 1977 (Act 51 of 1977).

(c) No person may interfere with explosives contemplated in paragraph (b), unless authorised by the inspector.

(d) The explosives-

(i) must be destroyed in accordance with section 8 if the explosives-

(aa) are declared unserviceable or unstable by the

- inspector; or
- (bb) are dangerous and pose a threat to the safety and security of any person; or
- (ii) may be destroyed in accordance with section 8 if the criminal proceedings in respect of the explosives are not finalised within three months from the seizure of the explosives.

(e) Before any explosives are destroyed in terms of paragraph (d), a person contemplated in section 212 (4) of the Criminal Procedure Act, 1977 (Act 51 of 1977), may investigate the explosives in question and prepare an affidavit contemplated in that section.

7 Forfeiture

If any explosives seized in terms of section 6 are forfeited to the State in terms of section 35 of the Criminal Procedure Act, 1977 (Act 51 of 1977), the Chief Inspector may instruct that the explosives must be-

- (a) kept for research and developmental purposes;
- (b) sold to cover expenses incurred in the storing of the explosives pending the finalisation of the criminal proceedings; or
- (c) destroyed in accordance with section 8.

8 Destruction of explosives

(1) Explosives may only be destroyed in accordance with such safe procedures as may be prescribed.

(2) Subject to section 7, any inspector may order the destruction of any explosives forfeited to the State and the owner of the explosives is responsible for any reasonable expenses incurred in connection with the destruction of the explosives.

(3) Any person who uses, keeps, transports or stores explosives in contravention of this Act is liable for any damage if the explosives are destroyed in terms of this section and if the damage is the result of the manner in which the person used, kept, transported or stored the explosives.

9 Prints and samples for investigation purposes

(1) Any police official may without a warrant take the fingerprints, palm prints, footprints and bodily samples of a person or group of persons or may cause any such prints or samples to be taken, if there are reasonable grounds to-

- (a) suspect that the person or that one or more of the persons in that group has committed an offence punishable with imprisonment for a period of five years or longer in terms of this Act; and
- (b) believe that the prints or samples or the results of an examination thereof, will be of value in the investigation by excluding or including one or more of the persons as possible perpetrators of the offence.

(2) The person who has control over prints or samples taken in terms of this section-

- (a) may examine them for the purposes of the investigation of the relevant offence or cause them to be so examined; and
- (b) must immediately destroy them when it is clear that they will not be of value as evidence.

(3) Bodily samples to be taken from the body of a person may only be taken by a registered medical practitioner or a registered nurse.

(4) A police official may do such tests, or cause such tests to be done, as may be necessary to determine whether a person suspected of having handled or detonated an explosive has indeed handled or detonated an explosive.

[NB: S. 9 has been substituted by s. 10 of the Criminal Law (Forensic Procedures) Amendment Act 6 of 2010, a provision which will be put into operation by proclamation. See PENDLEX.]

CHAPTER 3

MANUFACTURE, DEALING, IMPORTATION, EXPORTATION AND PACKAGING OF EXPLOSIVES (ss 10-19)

10 Keeping, storage, possession or transportation of explosives

(1) No person may keep, store or be in possession of any explosives on any premises other than an explosives manufacturing site or an explosives magazine, unless the explosives are kept, stored or possessed in accordance with-

- (a) the conditions of a permit issued by an inspector; and
- (b) any applicable regulation.

(2) No person may transport any explosives unless the explosives are transported in accordance with-

- (a) the conditions of a permit issued by an inspector; and
- (b) any applicable regulation.

(3) No person may permit any contravention of this section on any premises owned or occupied by such person.

(4) (a) Any person who keeps, stores, possesses or transports explosives must inform the Chief Inspector or the inspector appointed for the area in question of any loss of explosives within 24 hours of the loss being discovered.

(b) The information required in terms of paragraph (a) and the manner in which such information must be given, must be prescribed.

(c) The Chief Inspector must establish a database reflecting the information contemplated in paragraph (b), and such information may be used by any person who requires such information for any legal purpose.

(5) (a) No person may enter any explosives manufacturing site, explosives magazine or any vehicle in which explosives are being conveyed without permission of the person in control of the site, magazine or vehicle.

(b) Any person found in contravention of paragraph (a) may forthwith be removed from the site, magazine or vehicle by any person employed at the site or magazine or the person in charge of the vehicle, as the case may be.

11 Prohibition of transportation of explosives under certain conditions

(1) In order to maintain public order or to protect life and property, the Minister may, by notice in the *Gazette*, prohibit the transportation of any explosives from any place to any other place in or outside the Republic, for such a period as may

reasonably be necessary, except under such conditions as may be set out in the notice.

(2) The Minister may similarly prohibit the storage, removal, possession or use of explosives within any particular area by any person or by specified categories of persons, and may limit or vary the conditions of any licences or permits held or issued under this Act.

12 Certificate in respect of explosives manufacturing site and licence for explosives magazine

(1) Any person who wishes to build, erect or run an explosives manufacturing site on any premises must, in addition to the requirements of any other law, obtain a certificate from the Chief Inspector to the effect that the premises are suitable from a security point of view.

(2) (a) Any person who wants to run a magazine for the storage of explosives must apply, in writing, for a licence to the Chief Inspector, who must determine-

(i) whether the premises on which the magazine is situated or is to be erected, are suitable from a security point of view; and

(ii) whether the applicant is a suitable person or if the applicant is a juristic person, whether the person designated by the juristic person to be in control of the magazine is a suitable person.

(b) The Chief Inspector may issue the licence upon such conditions as he or she may deem fit, but must refuse to issue such a licence if the premises are unsuitable or the applicant or the designated person is not a suitable person to hold the licence in question.

(3) An applicant whose application is refused in terms of subsection (2) (b), may appeal against the decision in the prescribed manner.

(4) Any licence issued in terms of subsection (2) (b) or the conditions thereof may, upon application, be amended by the Chief Inspector if the safety and security of any person will not thereby be compromised.

(5) (a) The Chief Inspector may revoke any licence issued in terms of subsection (2) (b) if he or she is satisfied that the holder thereof or the designated person is no longer a suitable person.

(b) The holder of a licence revoked in terms of paragraph (a) may lodge an appeal against the decision in the prescribed manner.

(c) Until an appeal has been decided, the licence must be deemed to have been suspended.

(6) Any licence issued under this section expires after such period as may be prescribed and becomes invalid if the magazine in question is used for any purpose not provided for in the licence.

13 Licence to deal in explosives

(1) No person may sell, deal in or act as a broker in respect of any authorised explosives unless he or she is in possession of a licence granted in terms of this Act.

(2) Possession of a licence contemplated in subsection (1) does not entitle the licensee to exemption from holding any licence or permit which may be required in terms of any other law.

14 Manufacturing of explosives

(1) Subject to subsection (4), no person may manufacture, either wholly or in part, any authorised explosives in or on any premises other than an explosives

manufacturing site.

(2) (a) No person may manufacture any unauthorised explosives unless they are manufactured for the purposes of research or development and in such quantities and under such conditions as the Chief Inspector permits in writing.

(b) No unauthorised explosives manufactured in terms of paragraph (a) may be sold.

(3) Unless it is done on a licensed explosives manufacturing site, no person may-

(a) divide any explosives into their components, otherwise break down any explosives or remove any identification mark from any explosives;

(b) make any unserviceable explosives fit for use; or

(c) remake or rework any explosives.

(4) The Chief Inspector may grant written permission, subject to applicable regulations and any conditions imposed by him or her in writing, to any person applying therefor in writing, to manufacture explosives-

(a) on any premises where explosives are manufactured for testing;

(b) on any premises where such explosives as may be prescribed are prepared for immediate use;

(c) at any tertiary educational institution for the purposes of training or instruction; or

(d) in any laboratory or testing facility registered with the Chief Inspector.

15 Prohibition on use of explosives without permit

(1) No person may use any explosives unless he or she is-

(a) in possession of a permit authorising such use, issued by an inspector in the prescribed manner; or

(b) under the immediate and constant supervision of a person who is in possession of such a permit.

(2) (a) The Minister may by regulation or by notice in the *Gazette* exempt any person or any group of persons from obtaining a permit contemplated in subsection (1) if the exemption relates to the use of fireworks in celebration of a specified religious, cultural or traditional event.

(b) The Minister may limit the fireworks which may be used to any specified class and must specify the period for which the exemption is valid.

(3) No permit may be issued under this section unless the applicant is a suitable person.

16 Possession of imitation of explosives

Any person who gives out or pretends that an imitation of an explosive is in fact an explosive is guilty of an offence.

17 Importation and exportation of explosives

No person may import explosives into or export authorised explosives from the Republic or cause any explosives to be imported into or authorised explosives to be

exported from the Republic, unless-

- (a) he or she is in possession of a permit issued by or under the authority of the Chief Inspector; and
- (b) in the case of exportation, he or she is in possession of such an end-user certificate as may be prescribed.

18 Packaging of explosives

(1) (a) Any explosives must be clearly identified in the prescribed manner with legible and visible identification marks and must be packed in such packaging material as may be prescribed.

(b) The Chief Inspector, in writing, may permit different packaging material if there are compelling reasons justifying the giving of such permission.

(2) Any person manufacturing, transporting or importing any explosives must submit examples of the packaging material contemplated in subsection (1) to the Chief Inspector in the prescribed manner, and the Chief Inspector must create and maintain a database reflecting such information concerning the samples as may be prescribed.

19 Prohibition in respect of unauthorised explosives

No person may export, transfer, sell or supply any unauthorised explosives.

CHAPTER 4 RECORD KEEPING (ss 20-21)

20 Database

(1) Any person manufacturing explosives or importing explosives into the Republic must submit specimens of such explosives to the Forensic Science Laboratory of the South African Police Service in Pretoria in the prescribed manner from a date determined by the Minister in the *Gazette*.

(2) The Head of the Forensic Science Laboratory, or a person designated by him or her, must create and maintain a database containing information concerning any explosives contemplated in subsection (1).

21 Record keeping

Any person who holds a licence, a permit, a certificate or an authorisation in terms of this Act must keep a register in which such information as may be prescribed must be recorded.

CHAPTER 5 ENDANGERING LIFE OR PROPERTY (s 22)

22 Endangering life or property

(1) For the purposes of this section, 'explosion' includes a fire caused by explosives.

(2) Any person who intentionally delivers, places, discharges, detonates or initiates explosives with intent to cause death or serious bodily injury to any other person or to damage or destroy any place, facility or system is guilty of an offence.

(3) Any person who intentionally or negligently causes an explosion which endangers life or property is guilty of an offence.

(4) Any person who in any manner-

- (a) threatens that he or she or any other person intends to cause an explosion or to place explosives in such a manner or at such a place that life or property is or might be endangered is guilty of an offence; or
- (b) communicates false information, knowing it to be false, regarding any explosion or alleged explosion or explosives is guilty of an offence.

CHAPTER 6 PRESUMPTIONS (ss 23-25)

23 Presumption of possession of explosives under certain circumstances

(1) For the purposes of this section-

- (a) **'explosives'** includes any container, apparatus, instrument, incendiary device or any part thereof or article which contains any inflammable substance which has been adapted so that it can be used to cause an explosion or a fire; and
- (b) **'residential premises'** does not include a hotel, a hostel or an apartment building, but includes a room or a suite in a hotel, a room in a hostel and an apartment in an apartment building.

(2) Whenever a person is charged in terms of this Act with an offence of which the possession of explosives is an element and the State can show that, despite taking reasonable steps, it was not able with reasonable certainty to link the possession of the explosives to any other person, the following circumstances will, in the absence of evidence to the contrary which raises reasonable doubt, be sufficient evidence of possession by that person of the explosives where it is proved that the explosives were found-

- (a) on residential premises and the person was, at the time-
 - (i) in control of such premises; and
 - (ii) over the age of 16 years and ordinarily resident on the premises;
- (b) buried in or hidden on land used for residential purposes and the person was, at the time-
 - (i) employed to work on the land in or on which the explosives were found; and
 - (ii) over the age of 16 years;
- (c) on premises other than residential premises and the person was, at the time-
 - (i) in control of such premises; or
 - (ii) ordinarily employed on the premises; or

- (iii) present in the immediate vicinity of the place on the premises where the explosives were found and the circumstances indicate that the explosives should have been visible to that person; or
 - (vi) in control of a locker, cupboard or other container within which the explosives were found;
- (d) in or on a vehicle and the person was, at the time-
- (i) the driver of the vehicle; or
 - (ii) the person in charge of the vehicle; or
 - (iii) in control of all the goods on the vehicle; or
 - (iv) the consignor of goods in or among which the explosives were found; or
 - (v) the only person who had access to the explosives; or
 - (vi) the employer of the driver of the vehicle and present on the vehicle;
- (e) on any aircraft other than an aircraft which was used to convey passengers for gain, and the person was at the time-
- (i) present on the aircraft and in charge of the aircraft; or
 - (ii) the employer of the person contemplated in subparagraph (i) and present on the aircraft; or
 - (iii) the consignor of goods in or among which the explosives were found;
- (f) in the hold of an aircraft and the person was, at the time, the person in charge of the goods in the hold;
- (g) in a place on an aircraft or a vessel-
- (i) to which no-one besides the person has access; or
 - (ii) where the circumstances indicate that the explosives should have been visible to no-one besides the person; or
- (h) on any vessel other than a vessel which was used to convey passengers for gain, and the person was, at the time-
- (i) in charge of that vessel or that part of the vessel in which the explosives were found; or
 - (ii) ordinarily employed in the immediate vicinity of the place on the vessel where the explosives were found; or
 - (iii) in the cargo of a vessel and the person was, at the

time-

- (aa) in control of the cargo of the vessel; or
- (bb) the consignor of any goods in or among which the explosives were found.

(3) In any criminal proceedings against a person where it is alleged that such person has injured or killed another person or has damaged property belonging to another person, the following circumstances will, in the absence of evidence to the contrary which raises a reasonable doubt, be sufficient evidence that such a person participated in the injury, killing or damage, where it is proved that-

- (a) the person was driving or was a passenger in a vehicle other than a vehicle designed or licensed to convey more than 20 passengers;
- (b) an explosive was detonated from the vehicle while the person was driving or was a passenger in the vehicle; and
- (c) as a result of such detonation, a person was injured or killed, or property was damaged.

24 Presumption relating to failure to report

Whenever a person is charged with an offence in terms of this Act of failing to report the loss of explosives and it is proved that such a person was, at the time, the licensed or authorised possessor of the explosives alleged to have been lost, proof that the person has failed to produce such explosives within seven days of the request of an inspector to do so, will, in the absence of evidence to the contrary which raises reasonable doubt, be sufficient evidence that the explosives have been lost.

25 Presumption relating to failure to take reasonable steps

Whenever a person is charged in terms of the Act with an offence of failing to take reasonable steps to ensure that no explosives are brought onto premises under his or her ownership or control in contravention of this Act, proof that such explosives were brought onto premises under his or her ownership or control in contravention of this Act, will, in the absence of evidence to the contrary which raises reasonable doubt, be sufficient evidence that he or she failed to take such reasonable steps.

CHAPTER 7 PLASTIC EXPLOSIVES (ss 26-27)

26 Acts relating to unmarked plastic explosives

(1) Notwithstanding any other provision in this Act but subject to subsection (3), no person may manufacture, import, transport, keep, store, possess, transfer, purchase, sell, supply or export any unmarked plastic explosives.

(2) (a) The marking of plastic explosives must be done in such a manner as to achieve homogeneous distribution in the finished product.

(b) The minimum concentration of a detection agent in the finished product at the time of manufacture must be in accordance with the Technical Annex to the Convention.

(3) Subsection (1) does not apply-

- (a) for 15 years after 8 May 1998 in respect of the

transportation, keeping, storage, possession, transfer or transmission of any unmarked plastic explosives manufactured in, or imported into, the Republic before that date by or on behalf of an organ of state performing military or police functions; or

- (b) in respect of the manufacture, importation, transportation, keeping, storage, possession, transfer, sale, supply or transmission of any unmarked plastic explosives in limited quantities as may be determined in writing by the Chief Inspector-
 - (i) solely for use in-
 - (aa) research into or development or testing of new or modified explosives;
 - (bb) training in the detection of explosives; or
 - (cc) the development or testing of equipment for the detection of explosives; or
 - (ii) solely for forensic purposes,
and under such conditions as may be prescribed.

27 Information regarding plastic explosives

(1) Any person must, within 30 days after obtaining possession of or control over any plastic explosives, inform the Chief Inspector in writing-

- (a) of the quantity of such plastic explosives;
- (b) of the name of the manufacturer or importer thereof;
- (c) of any marks of identification thereon; and
- (d) whether or not it is marked with a detection agent.

(2) Subsection (1) does not apply to any member of the South African National Defence Force or the South African Police Service performing official military or police duties.

CHAPTER 8

OFFENCES, PENALTIES, JURISDICTION AND APPEALS (ss 28-32)

28 Offences

- (1) It is an offence to contravene or fail to comply with any-
 - (a) provision of this Act;
 - (b) condition of a licence, permit or authorisation issued or granted by or under this Act; or
 - (c) provision, direction or requirement of a notice issued under this Act.
- (2) It is an offence to-
 - (a) falsely represent oneself as an inspector;

- (b) wilfully obstruct or hinder any inspector in the exercise of the powers conferred upon him or her or in the performance of the duties assigned to him or her in terms of this Act;
 - (c) disobey any lawful order of an inspector, whether verbal or in writing; or
 - (d) wilfully give false information to an inspector.
- (3) It is an offence for any person to-
- (a) create, distribute, produce or import or be in possession of a publication, whether in electronic or any other form, which contains methods for the synthesising of explosives; or
 - (b) obtain information with regard to the method for the synthesising of explosives,

unless the publication or information relates to the performance of any activity permitted by a licence, a permit, an authorisation or a permission issued or given to him or her in terms of this Act.

(4) It is an offence for the owner or person in control of premises not to take reasonable steps to ensure that no explosives are brought onto the premises.

(5) (a) In the absence of evidence to the contrary which raises reasonable doubt, any person found in possession of explosives under such circumstances as to give rise to a reasonable suspicion that he or she intended to use the explosives for the purpose of injuring any person or damaging any property, is guilty of an offence.

(b) For the purposes of paragraph (a), 'explosives' includes any container, apparatus, instrument, incendiary device or any part thereof or article which contains any inflammable substance which has been adapted so that it can be used to cause an explosion or a fire.

29 Penalties

- (1) Any person convicted of a contravention of or a failure to comply with-
- (a) section 22 (2), is liable to imprisonment for a period not exceeding 25 years;
 - (b) section 11 (1) or (2), 13 (1), 14 (1), (2) or (3), 15 (1) or 17, is liable, in the case of a-
 - (i) first offender, to imprisonment for a period not exceeding 15 years;
 - (ii) second offender, to imprisonment for a period not exceeding 20 years; and
 - (iii) third or subsequent offender, to imprisonment for a period not exceeding 25 years;
 - (c) section 22 (3) or (4), where the-
 - (i) act or omission is wilful and death does not result therefrom, is liable to a fine or to imprisonment for a period not exceeding 15 years, or to both a fine and

- such imprisonment;
 - (ii) explosion is caused by a negligent act or omission and death results, is liable to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment;
 - (iii) explosion is caused by a negligent act or omission and property or life is endangered, is liable to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment;
 - (d) section 10 (1), (2), (3), (4) or (5), 16 or 28 (4) or (5) is liable to imprisonment for a period not exceeding 15 years;
 - (e) section 19 or 28 (3) is liable to imprisonment for a period not exceeding 10 years; and
 - (f) section 8 (1), 12 (1) or (2), 18 (1) or (2), 20 (1), 21, 26 (1) or (2), 27 (1) or 28 (2) (a), (b), (c) or (d) is liable to a fine or to imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.
- (2) A court sentencing a person in terms of subsection (1) may declare-
- (a) any explosives in respect of which the offence was committed to be forfeited to the State and may make any order with regard to the safekeeping and destruction of the explosives, including an order for payment of the cost of safekeeping and destruction, as the court may deem fit; and
 - (b) any vehicle or instrument used for the purposes of or in connection with the commission of the offence to be forfeited to the State.
- (3) Section 35 of the Criminal Procedure Act, 1977 (Act 51 of 1977), applies with the necessary changes to any forfeiture and disposal in terms of this section.

30 Declaration of persons as unfit to possess explosives

- (1) Unless the court determines otherwise, a person becomes unfit to possess explosives if convicted of-
- (a) the unlawful possession of explosives;
 - (b) any crime or offence involving the unlawful use or handling of explosives, whether explosives were used or handled by that person or by another participant in that crime or offence;
 - (c) an offence involving the failure to store explosives in accordance with the requirements of this Act;
 - (d) an offence involving the negligent handling or loss of

explosives while the explosives were in his or her possession;

- (e) an offence involving the handling of explosives while under the influence of any substance which has an intoxicating or narcotic effect;
- (f) any other crime or offence in the commission of which explosives were used, whether the explosives were used or handled by that person or by another participant in the crime or offence;
- (g) any offence involving violence, sexual abuse or dishonesty, for which the accused is sentenced to imprisonment without the option of a fine;
- (h) any other offence under or in terms of this Act in respect of which the accused is sentenced to imprisonment without the option of a fine;
- (i) any offence involving physical or sexual abuse occurring in a domestic relationship as defined in section 1 of the Domestic Violence Act, 1998 (Act 116 of 1998);
- (j) any offence involving the abuse of alcohol or drugs;
- (k) any offence involving dealing in drugs;
- (l) any offence in terms of the Domestic Violence Act, 1998 (Act 116 of 1998), in respect of which the accused is sentenced to imprisonment without the option of a fine;
- (m) any offence in terms of the Firearms Control Act, 2000 (Act 60 of 2000), in respect of which the accused is sentenced to imprisonment without the option of a fine;
- (n) any offence involving sabotage, terrorism, public violence, arson, intimidation, rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, kidnapping or child stealing; or

[Para. (n) substituted by s. 68 of Act 32 of 2007.]

- (o) any conspiracy, incitement or attempt to commit an offence referred to above.

(2) (a) A court which convicts a person of an offence referred to in Schedule 2 and which is not an offence contemplated in subsection (1), must enquire and determine whether that person is unfit to possess explosives.

(b) If a court, acting in terms of paragraph (a), determines that a person is unfit to possess explosives, it must make a declaration to that effect.

(3) If a person becomes unfit to possess explosives or is declared unfit to possess explosives in terms of subsection (1) or (2), as the case may be, the relevant court

must notify the Chief Inspector in writing of the person's unfitness and the notification must be accompanied by an order for the search and seizure of-

- (a) all certificates, licences and permits issued to the person in terms of this Act; and
- (b) all explosives in the person's possession.

31 Jurisdiction

A court of a regional division as contemplated in section 89 (2) of the Magistrates' Courts Act, 1944 (Act 32 of 1944), may impose any penalty in terms of this Act, despite anything to the contrary contained in any other law.

32 Appeals

(1) Where any person is not satisfied with a decision or instruction given by an inspector, he or she may, within 14 days, lodge a written appeal with the Chief Inspector or his or her delegate, who must take action as soon as possible.

(2) A person contemplated in subsection (1) must submit a written statement to the Chief Inspector or his or her delegate setting out the grounds upon which the appeal is based.

(3) Where any person is not satisfied with a decision or instruction given by the Chief Inspector or his or her delegate, he or she may, within 30 days, lodge a written appeal with an appeal board established by the Minister in the prescribed manner.

(4) Until any appeal has been decided in terms of this section, the decision or instruction, as the case may be, must be deemed to have been validly made or given.

CHAPTER 9 REGULATIONS (s 33)

33 Regulations

(1) The Minister may make regulations regarding-

- (a) anything which may or must be prescribed in terms of this Act;
- (b) the use, disposal and destruction of explosives;
- (c) the construction of explosives magazines;
- (d) the conditions under which the manufacture of explosives other than in a licensed explosives manufacturing site may be carried out;
- (e) the storage of explosives;
- (f) the classification, composition, testing and analysis of explosives;
- (g) the grant, cancellation and suspension of any permit or licence mentioned in this Act and the period for which any such permit or licence may be issued;
- (h) the packaging, transport, importation, exportation and transshipment of explosives, and the landing and handling

of explosives in ports, harbours, airports and other places of entry or exit;

- (i) the prohibition of the transportation of explosives or the use for the transportation thereof of any means of transport except under authority of a permit issued by an inspector, the grant, cancellation and suspension of any such permit and the period for which any such permit may be issued;
- (j) the issuing of a licence and an end-user certificate to a dealer or broker in explosives, the conditions of any such licence, the restrictions which may be placed upon the sale or disposal of explosives to particular persons and the quantity of any explosives which may be purchased by any person or company under a permit issued by an inspector;
- (k) the inquiry into the circumstances of explosions, including fires caused or suspected to have been caused by explosives, endangering or causing death or injury to persons or damage to property, and the giving of notice of all such explosions;
- (l) the prevention of trespassing in or upon an explosives manufacturing site or an explosives magazine or other place where explosives are kept;
- (m) determining fees or tariffs payable for any permit, licence or authorisation in terms of this Act;
- (n) the statistics which manufacturers and dealers may be called upon to supply;
- (o) the restricting of the sale and use of fireworks, excluding organised fireworks displays, to certain periods or days;
- (p) the establishment and functions of an appeal board;
- (q) any matter pertaining to record keeping;
- (r) the disposal of forfeited explosives; and
- (s) any other matter which must be regulated for the protection of life and property against explosions or for the achievement of the objects of this Act.

(2) Regulations made under subsection (1) may provide for penalties for a contravention thereof or failure to comply therewith, which penalties may not exceed a fine or imprisonment for a period of five years, and they may also provide that any explosives in respect of which the contravention or non-compliance has taken place must be forfeited and destroyed.

(3) Such regulations may also prescribe daily penalties for a continuing contravention or non-compliance or increased penalties for a second or subsequent contravention or non-compliance, subject to the maxima mentioned in subsection

(2).

CHAPTER 10 REPEAL OF LAWS, AND SAVING (ss 34-35)

34 Repeal of laws, and saving

(1) Subject to subsection (2), the laws mentioned in Schedule 1 are hereby repealed.

(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 this Act, must be regarded as having been issued, made, given, granted or taken under the corresponding provision of this Act.

35 Short title and commencement

This Act is called the Explosives Act, 2003, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule 1 LAWS REPEALED

(Section 24)

Number and year of law	Short title	Extent of repeal
Act 26 of 1956	Explosives Act, 1956	The whole.
Act 79 of 1962	Explosives Amendment Act, 1962	The whole.
Act 21 of 1963	Explosives Amendment Act, 1963	The whole.
Act 46 of 1964	Mines and Works and Explosives Amendment Act, 1964	The whole.
Act 20 of 1965	Explosives Amendment Act, 1965	The whole.
Act 12 of 1967	Explosives Amendment Act, 1967	The whole.
Act 74 of 1972	Explosives Amendment Act, 1972	The whole.
Act 35 of 1975	Explosives Amendment Act, 1975	The whole.
Act 101 of 1977	Explosives Amendment Act, 1977	The whole.
Act 5 of 1981	Explosives Amendment Act, 1981	The whole.
Act 18 of 1983	Explosives Amendment Act, 1983	The whole.
Act 178 of 1993	Explosives Amendment Act, 1993	The whole.
Act 83 of 1997	Explosives Amendment Act, 1997	The whole.
Act 17 of 1956	Riotous Assemblies Act, 1956	Section 16

Schedule 2 CRIMES AND OFFENCES GIVING RISE TO UNFITNESS ENQUIRY BY

COURT

(Section 30)

High treason.

Sedition.

Malicious damage to property.

Entering any premises with the intent to commit an offence under the common law or a statutory provision.

Culpable homicide.

Extortion.

Any crime or offence-

- (a) in terms of this Act or the previous Act, in respect of which an accused was not sentenced to imprisonment without the option of a fine;
- (b) in terms of the Domestic Violence Act, 1998 (Act 116 of 1998), in respect of which an accused was not sentenced to imprisonment without the option of a fine;
- (c) involving violence, sexual abuse or dishonesty, in respect of which an accused was not sentenced to imprisonment without the option of a fine;
- (d) in terms of the Firearms Control Act, 2000 (Act 60 of 2000), in respect of which an accused was not sentenced to imprisonment without the option of a fine.

Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

Schedule 3

CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION

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 Organisation 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 or 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-third 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 Depositary. 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 Depositary, 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 Depositary 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 Depositary 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 Depositary.
- 2 Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their Government, 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 dinitrate (EGDN)	$C_2H_4(NO_3)_2$	152	0.2% by mass
2,3-Dimethyl-2,3-dinitrobutane (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 levels shall be deemed to be marked.

PENDLEX: Explosives Act 15 of 2003 after amendment by the Criminal Law (Forensic Procedures) Amendment Act 6 of 2010
Section 1 - definitions

'**authorised person**' means with reference to fingerprints, any police official in the performance of his or her official duties;

'**body-prints**' means prints other than fingerprints, taken from a person and which are related to a crime scene, but excludes prints of the genitalia, buttocks or breasts of a person;

'**child**' means a person under the age of 18 years;

'**comparative search**' means the comparing of fingerprints, body-prints, or photographic images, taken under any power conferred by section 9, by an authorised person against any database referred to in Chapter 5A of the South African Police Service Act;

Section 9 - Prints and samples for investigation purposes

(1) Subject to subsection (3), any police official may without warrant take fingerprints body-prints, or bodily samples of a person or a group of persons or may cause any such prints or samples to be taken, if there are reasonable grounds to-

- (a) suspect that the person or that one or more of the persons in that group has committed an offence punishable with imprisonment for a period of five years or longer in terms of this Act; and
- (b) believe that the prints or samples or the results of an examination thereof, will be of value in the investigation by excluding or including that person or one or more of those persons as possible perpetrators of the offence.

(2) The person who has control over prints or samples taken in terms of this section-

- (a) may examine them for the purposes of the investigation of the relevant offence or cause them to be so examined; and
- (b) may cause any prints taken under any power conferred by

this section, to be subjected to a comparative search.

(3) Bodily samples to be taken from the body of a person may only be taken by a registered medical practitioner or a registered nurse.

(4) A police official may do such tests, or cause such tests to be done, as may be necessary to determine whether a person suspected of having handled or detonated an explosive has indeed handled or detonated an explosive.

(5) (a) The fingerprints, body-prints and bodily samples, taken under any power conferred by this section, and the record of steps taken under this section-

- (i) must upon the conviction of an adult person be retained;
- (ii) must, upon conviction of a child be retained on a database referred to in Chapter 5A of the South African Police Service Act, subject to the provisions relating to the expungement of a conviction and sentence of a child, as provided for in section 87 of the Child Justice Act, 2008 (Act 75 of 2008); and
- (iii) in a case where a decision was made not to prosecute a person, if the person is found not guilty at his or her trial, or if his or her conviction is set aside by a superior court or if he or she is discharged at a preparatory examination or if no criminal proceeding with reference to such fingerprints or body-prints was instituted against the person concerned in any court or if the prosecution declines to prosecute, must be destroyed within 30 days after the officer commanding the Division responsible for criminal records referred to in Chapter 5A of the South African Police Service Act has been notified.

(b) The fingerprints, body-prints or bodily samples which must be retained in terms of this section, may only be used for purposes related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution.

(c) Any person who, with regard to any fingerprints, body-prints or bodily samples referred to in this section-

- (i) uses or who allows the use of those fingerprints, body-prints or bodily samples for any purpose that is not related to the detection of crime, the investigation of an offence, the identification of missing persons, the identification of unidentified human remains or the conducting of a prosecution; or
- (ii) tampers with or manipulates the process or the fingerprints, bodyprints or bodily samples in question; or
- (iii) falsely claims such fingerprints, body-prints or bodily samples to have been taken from a specific person whilst knowing them to have been taken from another person or source,

is guilty of an offence and liable on conviction to imprisonment for a period not

exceeding 15 years.

(d) The fingerprints and body-prints referred to in paragraphs (a) (i) and (ii), must be stored in the database maintained by the National Commissioner, as provided for in Chapter 5A of the South African Police Service Act, 1995 (Act 68 of 1995).

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