

THE KHYBER PAKHTUNKHWA EXPLOSIVES ACT, 2013.

(KHYBER PAKHTUNKHWA ACT NO. XXIV OF 2013)

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[First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa (Extraordinary), dated the 20/09/2013].

**AN
ACT**

to regulate the manufacture, possession, use, sale, transportation of explosives in the Province of the Khyber Pakhtunkhwa.

Preamble.---WHEREAS it is expedient to regulate the manufacture, possession, use, sale and transportation of explosives in the Province of the Khyber Pakhtunkhwa;

It is hereby enacted as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Explosives Act, 2013.

(2) It shall extend to the whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. Definitions.---In this Act, unless there is anything repugnant in the subject or context,-

- (a) “aircraft” means any machine which can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth’s surface, and includes balloons, whether fixed or free, airships, kites, gliders and flying machines, for this Act aircraft means cargo aircraft;
- (b) “Authority” means Government or any other officer duly authorized by Government for the purpose of this Act;
- (c) “carriage” includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods, or passengers by land, in whatever manner the same may be propelled;

- (d) “Chief Inspector” means Chief Inspector of Explosives to be appointed by Government;
- (e) “Code” means the Criminal Procedure Code, 1898 (Act V of 1898);
- (f) “explosives” mean gunpowder, nitroglycerin, nitroglycol, gun cotton, dinitrotoluene (DNT), trinitrotoluene (TNT), Picric acid, dinitrophenol, trinitroresorcinol (styphnic acid), cyclotrimethylene, trinitramine (RDX, Cyclonite, Hexogen and variants), pentaerythritoltetranitrate (PETN), tetryl, nitroguanidine, lead azide, lead styphnate, fulminate of mercury or any other metal, diazodinitrophenol (DDNP), coloured fires or any other substances whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous nitro compound or in the form of watergel or slurry used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect and includes,-
 - (i) chemical compounds compositions or mixtures of which will produce, upon, release of its potential energy, a sudden outburst of gases, thereby exerting high pressures on its surroundings;
 - (ii) fog signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions and every adaption or preparation of an explosives as defined in this clause; and
 - (iii) such other substance as Government may, by notification in the official Gazette, specify for the purposes of this sub-section;
- (g) “Government” means the Government of the Khyber Pakhtunkhwa;
- (h) “manufacture” includes the preparation of explosives or any component parts of an explosives, the admixture or other treatment of the same, the breaking up or un-making of any explosives, or making fit for use any damaged explosives or the processing of any substance or matter with a view to causing an explosion, implosion or disintegration, and the process of remaking, altering or repairing any explosives;

- (i) “master”
 - (i) in relation to any vessel or ship means any person, other than a pilot, harbor master, assistant harbor master or berthing master, having for the time being the charge or control of such vessel or aircraft, as the case may be;
 - (ii) in relation to any boat belonging to a ship, means the master of that ship; and
 - (iii) in relation to aircraft means captain of the aircraft;
- (j) “prescribed” means prescribed by rules;
- (k) “Province” means the Province of the Khyber Pakhtunkhwa;
- (l) “rules” mean rules made under this Act;
- (m) “transportation” means to transport explosive substances within, into or away from the Province; and
- (n) “vessel” includes every ship, boat and other vessel used in navigation, whether propelled by oars or otherwise.

3. Government to establish an Inspectorate of Explosives.---As soon as after the commencement of this Act, Government shall establish an Inspectorate of Explosives, which shall be headed by the Chief Inspector, to be appointed by Government, who shall be assisted by such number of officers and staff, as may be prescribed.

4. Powers to make rules as to licensing of the manufacture, possession, use, sale, transportation of explosives.---(1) Government may by rules, made under this Act, regulate or prohibit, except under and in accordance with the conditions of a license granted as provided by these rules, the manufacture, possession, use, sale, transportation of explosives, or any specified class of explosives.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say-

- (a) the Authority by which licenses may be granted;
- (b) the fees to be charged for licenses, and other sums (if any) to be paid for expenses by applicants for licenses;

- (c) the manner in which applications for licenses must be made, and the matters to be specified in such applications;
- (d) the form in which, and the conditions on and subject to which, licenses must be granted;
- (e) the period for which licenses are to remain in force;
- (f) the exemption absolutely or subject to conditions of any explosives from the operation of the rules;
- (g) the authority to which appeals may be preferred and the procedure to be followed by such authority;
- (h) the total quantity of explosives that a licensee may possess in a given period of time; and
- (i) the transportation of explosives by land, water or air.

5. Penalties.---Rules made under section 4 may provide for the penalties, on all persons manufacturing, possessing, using, selling, transporting explosives in breach of the rules, or otherwise contravening the rules made under this Act:

Provided that the maximum penalties which may be imposed by any such rules shall not exceed-

- (i) in the case of a person so manufacturing an explosives, a fine which may extend to fifteen hundred thousand rupees;
- (ii) in the case of a person so possessing, transporting or using explosives, a fine which may extend to twelve hundred thousand rupees;
- (iii) in the case of a person so selling explosives, a fine which may extend to ten hundred thousand rupees; and
- (iv) in any other case, a fine of five hundred thousand rupees.

6. Power of Government to prohibit the manufacture, possession or transportation of specially dangerous explosives.---(1) Notwithstanding anything contained in this Act, Government may, from time to time, by notification in the official Gazette, prohibit, either absolutely or subject to conditions, the manufacture, possession, use, sale, transportation, of any explosive which is of such a dangerous nature that, in the opinion of Government, it is expedient for the public safety to issue such notification.

(2) The Customs Act, 1969 (IV of 1969), shall have effect in relation to any explosive with regard to transportation of which a notification has been issued under sub-section (1), and the vessel, carriage or aircraft containing such explosive, as the said Act, has in relation to any article the transportation of which is prohibited or regulated thereunder, shall apply accordingly to the vessel, carriage or aircraft containing such articles.

7. Prohibition of manufacture, possession, use, sale or transportation of explosives by young persons and certain other persons.---(1) Notwithstanding anything contained in this Act,-

- (a) any person-
 - (i) who has not completed the age of eighteen years; or
 - (ii) who has been sentenced on conviction of any offence involving violence or moral turpitude 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
 - (iii) who has been ordered to execute under the Code, a bond for keeping the peace or for good behaviors, at anytime during the terms of the bond; or
 - (iv) whose license under this Act has been cancelled, for contravention of the provisions of this Act or the rules, at any time during a period of five years from the date of cancellation of such license;

shall not manufacture, possess, use, sell or transport, any such explosive as Government may, having regard to the nature to thereof, by notification in the official Gazette, specify; and

- (b) no person shall sell deliver or dispatch any explosive to a person whom he knows or has reason to believe at the time of such sale, delivery or dispatch-
 - (i) to be prohibited under clause (a) to manufacture, possess, use, sell or transport such explosive; or
 - (ii) to be of unsound mind or having physical disability.

- (2) Whoever-
- (a) manufactures, possesses, uses, sells or transports any explosive in contravention of the provisions of clause (a) of sub-section (1); or
 - (b) sells, delivers or dispatches any explosive in contravention of the provisions of clause (b) of sub-section (1),

shall be punishable with a fine which may extend to three hundred thousand rupees.

8. Conferring powers of inspection, search, seizure, detention and removal.---(1) Government may make rules consistent with this Act authorizing any officer, either by name or in virtue of his office-

- (a) to enter, inspect and examine any place, carriage, aircraft or vessel in which an explosive is being manufactured, possessed, used, sold or transported under a license granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold or transported in contravention of this Act or the rules;
- (b) to search for explosives therein;
- (c) to take samples of any explosive found therein on payment of the value thereof; and
- (d) to seize, detain, remove and, if necessary, destroy any explosive found therein.

(2) The provisions of the Code, except that of section 103, shall mutatis mutandis apply to all searches and arrests made by police officer and an officer of equivalent rank of the law enforcement agency under this Act.

9. Presumption of proof against accused.---(1) Any person having in possession without any lawful excuse, any explosive substance with or without explosive devices, without justification, proper license or having been concerned with such explosive substances and devices shall be presumed, unless contrary is prayed, that the explosive substances was for the purpose of terrorism.

(2) Any person who has been convicted for an offence under this Act, if having property or assets, which are disproportionate to his known sources of income, it shall be presumed, unless contrary is proved, that the said property and assets have been acquired through terrorist activities and the same shall be liable for forfeiture.

10. Notice of accidents.---(1) Whenever, there occurs in or about, or in connection with, any place in which an explosive is manufactured, possessed or used, or any carriage, aircraft or vessel either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life or serious injury to person or property, or of a description usually attended with such loss or injury, the occupier of the place, or the master of the vessel or aircraft, or the person in charge of the carriage, as the case may be, shall within such time and in such manner as may be by rules prescribed, give notice thereof and of the attendant loss of human life or personal injury, if any, to Government or any other officer so authorized and to the officer in charge of the nearest police station.

(2) Whoever in contravention of sub-section (1) fails to give notice of any accident shall be punishable with fine which may extend to two hundred thousand rupees or if the accident is attended by loss of human life, with imprisonment for a term which may extend to one year or with fine, or with both.

11. Inquiry into accidents.---(1) Where any accident such as is referred to in section 10 occurs in or about or in connection with any place, carriage, aircraft or vessel or in any other circumstances except under the control of any of the armed forces of Pakistan, Government, the Chief Inspector, the Deputy Commissioner or any other officer so authorized by Government, in cases attended by loss of human life, or may, in any other case, hold or direct an Executive officer sub-ordinate to him to hold, such an inquiry.

(2) Any person holding an inquiry under this section shall have all the powers of a Magistrate in holding an inquiry into an offence under the Code and may exercise such of the powers conferred on any officer by rules under section 8 as he may think it necessary or expedient to exercise for the purposes of the inquiry.

(3) The person holding an inquiry under this section shall make a report to Government stating the causes of the accident and its circumstances.

(4) Government may make rules-

- (a) to regulate the procedure of inquiries under this section;
- (b) to enable the Chief Inspector to be present or represented at any such inquiry;
- (c) to permit the Chief Inspector or his representative to examine any witnesses at the inquiry;

- (d) to provide that where the Chief Inspector is not present or represented at any such inquiry, a report of the proceedings thereof shall be sent to him; and
- (e) to prescribe the manner in which and the time within which notices referred to in section 10, shall be given.

12. Inquiry into more serious accidents.---(1) Government may, where it is of opinion, whether or not it has received the report of an inquiry under section 11, that an inquiry of more formal character should be held into the causes of an accident such as is referred to in section 10, appoint a senior officer or any other competent person to hold such inquiry, and may also appoint one or more persons possessing legal or special knowledge to act as assessors in such inquiry.

(2) Where Government orders an inquiry under this section, it may also direct that any inquiry under section 11, pending at the time shall be discontinued.

(3) The person appointed to hold an inquiry under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Act No. V of 1908), for the purposes of enforcing the attendance of witnesses and compelling the production of documents and material objects and every person required by such person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of section 176 of the Pakistan Penal Code, 1860 (Act No. XLV of 1860).

(4) Any person holding an inquiry under this section may exercise such of the powers conferred to any officer by rules under section 8, as he may think it necessary or expedient to exercise for the purpose of the inquiry.

(5) The person holding an inquiry under this section shall make a report to Government stating the causes of the accident and its circumstances, and adding any observations which he or any of the assessors may think fit to make and Government shall cause every report so made to be published at such time and in such manner as it may think fit.

(6) Government may make rules for regulating the procedure at inquiries under this section.

13. Offences by companies.---Where the person guilty of an offence under this Act, is a company, corporation, firm or institution, every director, partner and concerned employee of the company, corporation, firm or institution shall, unless he proves that the offence was committed without his knowledge or consent, be guilty of the offence.

14. Forfeiture of explosives.---When a person is convicted of an offence punishable under this Act or the rules, the Court before which he is convicted may direct that the explosives, or ingredient of explosives, or the substance, if any, in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall, with the receptacles containing the same, be forfeited.

15. Distress of aircraft or vessel.---Where the owner or master of any aircraft or vessel is adjudged under this Act or the rules, to pay a fine for any offence committed with, or in relation to, that aircraft or vessel, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of,-

- (a) the aircraft and its furniture or so much of the furniture; or
- (b) the vessel and the tackle, apparel and furniture of such vessel or so much of the tackle, apparel and furniture thereof, as is necessary for the payment of the fine.

16. Abetment and attempts.---Whoever abets, within the meaning of the Pakistan Penal Code, 1860 (Act No. XLV of 1860), the Commission of an offence punishable under this Act, or the rules, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall be punishable as if he had committed the offence.

17. Power to arrest without warrant persons committing dangerous offences.---Whoever is found committing any act for which he is punishable under this Act or the rules, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, aircraft or vessel, may be apprehended without a warrant by a police officer, or by the occupier of, or the agent or servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port or the officer in charge of the airport, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

18. Saving and power to exempt.---(1) Nothing in this Act, except sections 10, 11 and 12, shall apply to the manufacture, possession, use, transportation of an explosive-

- (a) by any of the armed forces of Pakistan; and
- (b) by any person employed under Government in execution of this Act.

(2) Government may, by notification in official Gazette, exempt absolutely or subject to any such conditions as it may think fit to impose, any explosives from all or any of the provisions of this Act.

19. Saving of the Khyber Pakhtunkhwa Arms Ordinance, 2013.---Nothing in this Act shall effect the provisions of the Khyber Pakhtunkhwa Arms Ordinance, 2013 (Khyber Pakhtunkhwa Ordinance No. III of 2013):

Provided that an authority granting a license under this Act for the manufacture, possession, sale, transportation of an explosive may, if empowered in this behalf by the rules under which the license is granted, direct by an order written on the license that it shall have the effect of a like license granted under the Khyber Pakhtunkhwa Arms Ordinance, 2013 (Khyber Pakhtunkhwa Ordinance No. III of 2013).

20. Saving as to liability under other law.---Nothing in this Act or the rules made under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules:

Provided that a person shall not be punished twice for the same offence.

21. Extension of definition of “explosive” to other explosive substances.---Government may, from time to time, by notification in the official Gazette, declare that any substance which appears to Government to be specially dangerous to the life or property, by reason either of its explosive properties, or of any process in the manufacturing thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act, and the provisions of this Act, subject to such exceptions, limitations and restrictions as may be specified in the notification shall accordingly extend to that substance in like manner as it were included in the definition of the term “explosives” in this Act.

22. Procedure for making publication and confirmation of rules.---(1) Before making the rules, a draft proposal of it shall be published, for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as Government, from time to time, by notification in the official Gazette, prescribes.

23. Transportation of explosives by air.---The transportation of explosives by air shall be carried out by cargo and other permissible aircraft and not by passenger aircraft in accordance with the rules and regulations of International Civil Aviation Organization (ICAO), International Air Transport Association (IATA) and Civil Aviation Authority of Pakistan (CAA).

24. Removal of difficulties.---If any difficulty arises in giving effect to any provision of this Act, the Government may, by notification in the official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be appropriate or necessary for the purpose of removing such difficulty.

25. Cognizance.--- All offences under this Act shall be cognizable and non-bailable.

26. Indemnity.---No suit, prosecution or other proceedings shall lie against Government or any officer of Government or anything in good faith, done or intended to be done in pursuance of this Act or the rules.

27. Appeals.---The Secretary to Government, Home and Tribal Affairs Department, shall hear all appeals filed by any person or organization feeling aggrieved from an order or decision of the Chief Inspector, Deputy Commissioner or any other officer authorized under this Act. The provisions of this section shall not apply to any criminal proceedings pending before any Court of law.

28. Act to override other laws.---The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

29. Repeal and savings.---(1) The Explosives Act, 1884 (Act IV of 1884), to the extent of the Khyber Pakhtunkhwa Province, is hereby repealed.

(2) Notwithstanding the aforesaid repeal, anything done, action taken, rules made, and notification or order issued under the aforesaid Act, shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done; taken, made or issued, under this Act, and shall have effect accordingly.