



Tonga

PUBLIC ORDER (PRESERVATION) ACT

1988 Revised Edition



PUBLIC ORDER (PRESERVATION) ACT

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SCHEDULE **18**



PUBLIC ORDER (PRESERVATION) ACT

Act 10 of 1969

AN ACT TO BETTER PROVIDE FOR THE MAINTENANCE OR RESTORATION OF PUBLIC ORDER IN CASE OF EMERGENCY AND FOR OTHER PURPOSES

Commencement [31st March, 1970]

1 Short title.

This Act may be cited as the Public Order (Preservation) Act.

PART I. - PRELIMINARY

2 Interpretation.

In this Act, unless the contrary intention appears —

“**corrosive substance**” includes any of the acids and substances specified in the Schedule to this Act and any other substance which is capable on application to the human body of causing hurt through corrosive action;

“**explosive substance**” includes any material for making any explosive substance and any bomb, grenade, apparatus, machine, implement or material used or intended to be used or adopted for causing or aiding in

causing any explosion in or with any explosive substance and any part of such bomb, grenade, apparatus, machine or implement;

“**hurt**” includes a disease or disorder of the human body, whether permanent or temporary;

“**offensive weapon**” includes any instrument which, if used as a weapon of offence, is likely to cause hurt;

“**police officer**” includes a special police officer of the Police Force of the Kingdom;

“**proclaimed area**” means an area in respect of which a proclamation made or renewed under section 4 of this Act is for the time being in force;

“**subversive document**” means a document which contains —

- (a) a matter expressive of seditious intention within the meaning of the Criminal Offences Act;
- (b) a matter likely to be prejudicial to the maintenance or restoration of public order;
- (c) a matter expressive of counselling disobedience to a law of the Kingdom;
- (d) a matter inciting or promoting, or likely to incite or promote, unlawful violence, feeling of ill-will or hostility between different races or classes of the population of the Kingdom;
or
- (e) a matter inciting or promoting, or likely to incite or promote, disaffection, hatred or contempt, against a civil servant or a member of an armed force lawfully in the Kingdom in the execution of his duties;

“**Governing Authority**” means the Prime Minister, with the advice of either the Minister of Police, or a person lawfully discharging the duties of that officer, or a Minister charged with the responsibility for internal security;

“**the Superintendent**” means the Superintendent of Police or police officer for the time being lawfully authorised to exercise the powers and perform the duties of the Superintendent.

PART II. - PROCEDURE AND POWERS RELATING TO AN AREA PROCLAIMED DANGEROUS TO PUBLIC ORDER

3 Proclamation of state of danger to public order.

- (1) The Governing Authority may proclaim the existence of a state of a danger to public order in an area in the Kingdom where, in its opinion —
 - (a) public order in that area is seriously threatened or disturbed; and
 - (b) it is necessary for the purpose of maintaining or restoring public order to make the proclamation. (2) A proclamation made under subsection (1) applies only to the area specified in the proclamation and remains in force until it is revoked by the Governing Authority, or ceases to have effect in accordance with the provisions of this section.
- (3) The proclamation ceases to have effect on the expiration of one month from the date on which it is made or, if it is renewed, on the expiration of the time for which it is renewed.
- (4) The Governing Authority may renew the proclamation from time to time for such period, not exceeding one month at a time, as may be specified.
- (5) The proclamation or its renewal shall be published in such manner as the Governing Authority deems necessary for bringing it to the notice of persons who in its opinion ought to have notice of it, and shall have effect as soon as it is so published.
- (6) A copy of the proclamation or its renewal shall, as soon as possible after it is made, be laid before Privy Council, and if Privy Council annuls it, the proclamation or its renewal shall cease to have effect notwithstanding the provision of subsections (3) and (4) of this section but without prejudice to anything done before the annulment.

4 Governing Authority may delegate power to issue proclamation.

- (1) The Governing Authority may delegate any of its powers under section 3 to the Governor of a district other than Tongatapu.
- (2) A power delegated under this section may be exercised by the delegate in the district in respect of which he is the Governor.
- (3) A delegation under this section is revocable at will and does not prevent the exercise of the power by the Governing Authority.

5 Power to close or to regulate use of roads etc.

In any proclaimed area a police officer in charge of a Police Station or a police officer not below the rank of sub-inspector may by order or by giving directions or in any manner he thinks fit under the circumstances regulate, restrict, control or prohibit the use of any road, street, path, waterway or public place by any person, vehicle or vessel or by any class of persons, vehicles or vessels.

6 Power to prohibit and disperse assemblies.

- (1) In a proclaimed area a police officer not below the rank of sub-inspector or a police officer in charge of a Police Station may, either absolutely or subject to such conditions as he may think necessary, prohibit the holding of a meeting or procession, or the assembly of 5 or more persons in a place or building (whether public or private) in that area.
- (2) A police officer in charge of a Police Station or any police officer not below the rank of sergeant may order a meeting, procession or any assembly of 5 or more persons held in a place or building (whether public or private) in a proclaimed area to disperse and upon the making of the order, the members of the meeting, procession or assembly shall disperse accordingly.
- (3) A police officer may use such force as may be necessary in the interest of public security (including the use of lethal weapons) to disperse a meeting, procession or assembly prohibited, or ordered to be dispersed, under this section.

7 Power to erect barriers etc.

- (1) Barriers may be erected or placed in or across a road, street, path, waterway or any public place whenever it is deemed necessary by a police officer for the preservation of law and order, for the prevention or detection of crimes, or in relation to the exercise of the powers conferred by section 5 of this Act.
- (2) A person, whether on foot or in a vehicle or vessel, shall comply with an instruction, direction or signal of a police officer requiring that person to stop at, before or after reaching the barrier.
- (3) A police officer may take all reasonable steps and may use such force as may be necessary (including the use of lethal weapons) to prevent a person, whether on foot or in a vehicle or vessel, from passing the barrier contrary to an instruction, direction or signal.

8 Power to impose curfew.

- (1) In a proclaimed area the Governing Authority, police officer not below the rank of sub-inspector or a police officer in charge of a Police Station in that area may, subject to such exemptions as may be made, order every person within the area to remain indoors between such hours as may be specified.
- (2) The Governing Authority may vary or cancel any order made by a police officer under subsection (1).
- (3) An order under this section shall not apply to —
 - (a) His Majesty the King;
 - (b) the Prime Minister;
 - (c) the Governor of a district;
 - (d) a police officer, or member of a naval, military or air force established or serving in the Kingdom when on duty; or
 - (e) a person or class of persons exempted under subsection (1) of this section.

9 Power to exclude persons from certain areas.

- (1) In a proclaimed area a police officer not below the rank of sub-inspector or a police officer in charge of a Police Station may, subject to such exceptions as may be made, by order, direction or otherwise —
 - (a) prohibit a person or class of persons from entering into the area under his charge, or into a place or building in that area; and
 - (b) regulate the movement and conduct of a person or class of persons within the area under his charge.
- (2) A police officer may search, or detain for the purpose of searching, a person referred to in paragraphs (a) and (b) of subsection (1), but a female shall not be searched except by another female.
- (3) A person who fails to comply with an order, direction or otherwise made under subsection (1) may be removed by a police officer from the area, place or building without prejudice to any proceeding which may be taken against that person.
- (4) The Governing Authority may vary or cancel an order or direction made by a police officer in exercise of the powers conferred by subsection (1).

10 Power to discontinue telephone services.

- (1) The Governing Authority may by written instrument direct a telecommunication authority to withdraw or suspend either in whole or in part all or any telecommunication service to and from, or within a proclaimed area.
- (2) A telecommunication authority directed by the Governing Authority under subsection (1) shall, notwithstanding the provisions of any agreement or law to the contrary, forthwith withdraw or suspend the telecommunication service as specified in the direction.
- (3) In this section —
“telecommunication authority” means the authority charged with the administration of the Telephones Act. (*Cap. 97*)

11 Control of persons.

- (1) Where it appears to a police officer not below the rank of sub-inspector, or to a police officer in charge of a Police Station in a proclaimed area, that a person —
 - (a) has recently been concerned in acts —
 - (i) involving or likely to involve, cause or provoke a breach of the peace in a proclaimed area; or
 - (ii) likely to be prejudicial to the success of measures taken to maintain or to restore public order in a proclaimed area;
 - (b) is concerned in the preparation or instigation of any of the acts mentioned in the last preceding paragraph; or
 - (c) is likely to be concerned in any of the acts mentioned in paragraph (a) by reason of his association with any person or organisation concerned in those acts, or otherwise,that police officer may exercise in relation to that person all or any of the powers referred to in subsection (2).
- (2) The following are the powers referred to in subsection (1) and which may be exercised over and in relation to a person referred to in paragraphs (a), (b) and (c) of that subsection: —
 - (a) to order that person to be excluded from the proclaimed area or any part of it;
 - (b) to order that person to reside in such place or area, whether in the proclaimed area or not, as may be specified and not to leave that area without permission and subject to such conditions as may be specified;

- (c) to order that person to remain within doors during such hours as may be specified;
 - (d) to order that person to report to the Police at such times, dates and places as may be specified;
 - (e) to order that person to enter into a bond for such amount and with such securities as may be specified for his good behaviour or for due compliance with any orders made under this subsection.
- (3) An order made under this section may be cancelled or varied by the Governing Authority but shall not have effect after the area in connection with which the order was made or varied has ceased to be a proclaimed area.

12 Power to search etc.

- (1) Where in a proclaimed area any person, premises, vehicle, vessel or aircraft, is suspected to have or to contain evidence of the commission of an offence, to have or contain any offensive weapon or subversive document or any other thing whatever capable of being used to cause injury to a person or property, a police officer of or above the rank of sergeant may, with or without any warrant or assistance —
- (a) stop and search that person;
 - (b) enter and search the premises;
 - (c) stop, board and search that vessel, vehicle or aircraft (not being a naval, military or airforce vessel, vehicle or aircraft) and;
 - (d) seize the evidence, offensive weapon and subversive document found in or on that person, premises, vehicle, vessel or aircraft as well as any other thing which he has reasonable grounds to believe is intended or likely to be used to cause injury to person or property.
- (2) A police officer of or above the rank of sergeant may with or without any warrant or assistance search a person or vehicle referred to in subsection (1) where that person or vehicle is in or on any public road or place and may likewise seize the evidence, offensive weapon, subversive document or thing referred to in that subsection and found in or on that person or vehicle.
- (3) Where a police officer under subsection (2) (being a police officer of or above the rank of sergeant) has reasonable grounds for believing that any matter liable to be seized under subsection (1) is likely to be removed, lost or destroyed in the absence of an officer of or above the rank of sergeant, that police officer may exercise any one or more of the powers and authority conferred by subsection (1).

- (4) A female shall not be searched under this section except by another female.

13 Disposal of property seized

An offensive weapon, subversive document, corrosive or explosive substance or ammunition seized by or come into possession of a police officer under section 12 may be disposed of in such manner as the Governing Authority may direct.

14 Arrest and detention.

- (1) A police officer may without warrant arrest a person suspected on reasonable grounds of having committed an offence against this Act.
- (2) A police officer may in a proclaimed area without warrant arrest a person in respect of whom he has reason to believe to be a person within the meaning of paragraphs (a), (b) or (c) of subsection (1) of section 11 of this Act.
- (3) A person arrested under the last preceding subsection may be detained for a period not exceeding 24 hours and may be dealt with under section 11 of this Act.
- (4) A police officer may in a proclaimed area without warrant arrest a person ordered to be excluded from the area under section 11 of this Act and may detain the person arrested for a period not exceeding 24 hours for the purpose of removing him from that area.

15 Arrested and detained person deemed in lawful custody.

A person detained under the powers conferred by this Act shall be deemed to be in lawful custody and may be detained in a prison, police station or in any other similar place authorised generally or specially by a police officer not below the rank of sub-inspector or an officer in charge of a police station.

16 Use of lethal weapon in effecting arrests etc.

Notwithstanding anything contained in any law to the contrary, a police officer may, in order —

- (a) to effect the arrest of a person who fails to comply with an order made under section 8 of this Act, or whom that officer suspects on reasonable grounds to have committed in a proclaimed area an offence against sections 21, 22, 23 or 27 of this Act;
- (b) to overcome forcible resistance offered by or in aid of a person being arrested under paragraph (a); or

- (c) to prevent the escape or the rescue of a person arrested under this section,

use such force as in the circumstances of the case may be reasonably necessary, which force may extend to the use of lethal weapons.

17 Control of arms.

During the period in which a proclamation under section 3 of this Act is in force, the Governing Authority may by order, notwithstanding the provisions of any licences or permits issued in respect of arms —

- (a) prohibit the use, possession or custody of arms by any person in any part of the Kingdom for such period as may be specified; and
- (b) provide for —
 - (i) the taking of arms into custody;
 - (ii) the cancellation or suspension of licences or permits for arms for the period specified;
 - (iii) the giving of notice of the order to any persons who in its opinion ought to have notice of the order; and
 - (iv) the carrying of the order into effect generally.

18 Power of armed forces.

- (1) A commander of any armed forces serving in the Kingdom and a member of those armed forces may, when engaged on duty connected with the maintenance or restoration of public order, exercise any of the powers conferred upon a police officer by section 5, subsections (2) and (3) of section 6, section 7, subsections (2) and (3) of section 9, subsections (1), (2) and (3) of section 12, subsection (1) of section 14, and section 16 in like manner as if references in those sections and subsections to a police officer were references to a member of the armed forces of equivalent rank.
- (2) For the purposes of this section —
 - (a) “commander” means a commissioned officer for the time being in command of members of the armed forces;
 - (b) a commissioned officer of any armed forces shall be deemed to be of equivalent rank to a police officer above the rank of a sergeant major;
 - (c) a sergeant major of any armed forces shall be deemed to be of equivalent rank to a police officer of the rank of sergeant major; and

- (d) a sergeant or petty officer of any armed forces shall be deemed to be of equivalent rank to a police officer of the rank of sergeant.

19 Photographs, finger prints etc. of persons arrested or detained may be made.

The provisions of the Police Act, or of any other Act relating to the taking of finger impressions, photographs, descriptions, measurements, palmprints or footprints of persons in lawful custody shall apply to persons arrested and detained under this Act.

20 Promulgation and cancellation of orders etc.

- (1) Where an order or direction is given or made under the provisions of this Part of this Act, the person or persons giving or making the order or direction shall, unless it is otherwise provided, cause notice of the order or direction to be published in such manner as he or they think necessary to bring the notice to the attention of such persons as in his or their opinion ought to be aware of the notice, and the order or direction shall have effect as soon as the notice is so published.
- (2) An order or direction made under the provisions of this Part of the Act may at any time during its currency be cancelled by a person empowered to make the order or direction, but the cancellation shall not affect the validity of the order or direction or anything done thereunder before cancellation.

PART III. - OFFENCES RELATING TO PUBLIC ORDER

21 Use of offensive weapon etc. an offence.

A person who, in a proclaimed area, unlawfully or maliciously —

- (a) uses an offensive weapon in a manner likely to endanger life or cause serious injury to person or property;
- (b) causes, by an explosive substance, an explosion of a nature likely to endanger life or cause serious injury to person or property; or
- (c) uses any corrosive or inflammable substance in a manner likely to endanger life or cause serious injury to person or property

commits an offence, whether injury to person or property has actually been caused or not, and is on conviction liable to imprisonment for a term not exceeding 10 years.

22 Consorting with persons who use offensive weapons etc. an offence.

- (1) Where a person consorts with, or is found in the company of another person who —
 - (a) is committing, attempting to commit or doing an act in preparation for the commission of, an offence under section 21 of this Act; or
 - (b) has recently committed, recently attempted to commit or recently done any act in preparation for the commission of, an offence under section 21 of this Act,

that first mentioned person commits an offence if the manner in which he consorts with, or the circumstances in which he is found in the company of, that other person raise a reasonable presumption that he intends or is about to act, or has recently acted, with that other person in a manner prejudicial to the maintenance or restoration of public order in a proclaimed area.

- (2) A person convicted for an offence under this section is liable to a term of imprisonment not exceeding 7 years.

23 Possessing of carrying offensive weapon etc. an offence.

- (1) A person who, in a public place in a proclaimed area, carries or has in his possession or under his control an offensive weapon, or an explosive, corrosive or inflammable substance, commits an offence unless that person proves that the weapon, or the substance was being carried by him or was in his possession or under his control solely for some lawful purpose.
- (2) A person convicted for an offence under subsection (1) is liable to a term of imprisonment not exceeding 10 years.
- (3) A person who, in a place (other than a public place) within a proclaimed area, has in his possession or under his control an offensive weapon, or an explosive, corrosive or inflammable substance, in circumstances which raise a reasonable presumption that the weapon or the substance is intended to be used for a purpose prejudicial to the maintenance or restoration of public order, commits an offence unless that person proves that he had the weapon or the substance in his possession or under his control solely for a lawful purpose.
- (4) A person convicted for an offence under subsection (3) is liable to a term of imprisonment not exceeding 5 years.

24 Presumption.

- (1) Where an offensive weapon, or an explosive, corrosive or inflammable substance is found in or on any premises, the occupier of those premises is deemed to be in possession of the weapon or the substance unless he proves that —
 - (a) another person was in possession of the weapon or the substance; or
 - (b) he had no knowledge or reasonable means of knowing that the weapon or the substance was in or on those premises, and that he had taken all reasonable precautions against the weapon or substance being kept in or on those premises.
- (2) In a prosecution under subsection (3) of section 23, it shall be presumed until the contrary be proved, that weapons or substances referred to in that subsection were intended to be used for a purpose prejudicial to the maintenance or restoration of public order if —
 - (a) the number of weapons or the quantity of the substances found —
 - (i) exceeded the number or quantity reasonably required to be kept by the accused person for ordinary use and consumption in his household or establishment; and
 - (ii) in the case of an accused person carrying on a business, exceeded the number or quantity reasonably required to be kept in the ordinary course of that business;
 - (b) the weapons or substances were kept concealed or in a place other than that in which they might reasonably be expected to be kept for domestic or, in the case of an accused person carrying on business, for business purposes; or
 - (c) the weapon or substances were kept in containers other than containers of a kind in which the weapons or substances are ordinarily kept for domestic or, in the case of an accused person carrying on business, for business purposes.

25 Penalty.

- (1) A person who contravenes or fails to comply with —
 - (a) a provision of this Act; or
 - (b) an order, direction, prohibition, instruction, signal or requirement made or given pursuant to a provision of this Act,

commits an offence and is on conviction liable, where no other penalty is specifically provided, to a fine not exceeding \$100 or to a term of imprisonment not exceeding 6 months or to both the fine and the imprisonment.

26 Provoking a breach of the peace.

A person who, in any place in a proclaimed area, uses any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned, commits an offence and is on conviction liable to a term of imprisonment not exceeding 3 years.

27 Offences relating to breach of peace.

A person who, in any place in the Kingdom and during any period in which a proclamation under section 3 of this Act is in force in respect of any area in the Kingdom, does an act or utters any word, or prints, publishes, sells, offers for sale, distributes or reproduces for distribution, imports or has in his possession any document containing any matter which —

- (a) is likely to be prejudicial to the maintenance or restoration of public order in the proclaimed area or in any other part of the Kingdom;
- (b) counsels or is likely to lead to disobedience to the law of the Kingdom or to any lawful order made thereunder or to the obstruction of public officers in the execution of their duty to restore or maintain public order;
- (c) incites or is likely to cause unlawful violence or to promote feelings of ill will or hostility between different races or classes of the population of the Kingdom; or
- (d) is likely to bring into hatred or contempt or to excite disaffection against any public servant in the execution of his duty or against any class of public servants or against any armed force lawfully in the Kingdom or any member of such force in the execution of his duty,

commits an offence and is on conviction liable to a term of imprisonment not exceeding 3 years.

28 Law relating to criminal offences not affected.

Nothing in this Part affects any other law relating to criminal offences provided that a person shall not be punished twice for the same offence.

SCHEDULE

(Section 2)

| | |
|-------------------|---------------------|
| Acetic acid | Ammonia |
| Formic acid | Potassium hydroxide |
| Hydrochloric acid | Phenols |
| Nitric acid | Sodium hydroxide |
| Sulphuric acid | |