



Tonga

# **FIRE SERVICE ACT**

**1988 Revised Edition**





# FIRE SERVICE ACT

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# FIRE SERVICE ACT

*Acts 18 of 1978 and 5 of 1981*

## AN ACT TO ESTABLISH A FIRE SERVICE FOR THE PROTECTION OF LIFE AND PROPERTY FROM FIRE

Commencement [29th June 1979]

### 1 Short title.

This Act may be cited as the Fire Service Act.

## PART I. - PRELIMINARY

### 2 Interpretation.

In this Act and in any Regulations made hereunder unless the context otherwise requires —

“**building**” includes a building under construction;

“**fire area**” means a town, village or area so declared under this Act;

“**fire brigade**” means a self-contained unit of a Fire Service;

“**fireman**” means a fireman appointed under this Act;

“**fire-risk area**” means a fire-risk area declared under section 19 of this Act;

“**fire-service**” means a Fire Service established under this Act;

“**Member of a Fire Service**” means an officer, or a fireman or a volunteer fireman;

“**Minister**” means the Minister of Police;

“**occupier**” includes, in relation to land —

- (a) a person who has or is entitled to have, immediate possession of the land; and
- (b) a person who is entitled, under any law in force in the Kingdom, to remove timber, minerals, petroleum or other things on or under the land, whether solely or jointly with another person;

“**Officer or Fire Officer**” means —

- (a) The Minister of Police or Fire Officer or any other Officer established by Cabinet from time to time, whose rank is equivalent to, or higher than, an Inspector of Police; and
- (b) includes a designated Police Commissioned Officer;

“**owner**” includes, in relation to land —

a person who, whether as a beneficial owner, executor, administrator, trustee, mortgagee in possession, attorney, agent or otherwise is in receipt of, or is entitled to receive, the rents and profits of the land or would, if the land were let to a tenant, be entitled to receive the rents and profits, whether solely or jointly with another person,

“**part-time fireman**” means any person appointed to be a part-time fireman under section 8 of this Act;

“**Regulations**” means the Regulations made under this Act;

“**Volunteer Fireman**” means any person appointed to be a volunteer fireman under section 8 of this Act.

## **PART II. - ADMINISTRATION**

### **3 Fire Area.**

The Minister may, with the consent of Cabinet, declare a town, village or area to be a fire area.

**4 Establishment.**

The Minister may, with the consent of Cabinet, establish a fire service for a fire area.

**5 Responsibility.**

The Minister shall be responsible for the organisation, management and control of all Fire Services and for the protection of life and property in case of fire in fire areas.

**6 Delegation of powers to Fire Officer.**

- (1) The Minister may, by writing under his hand, delegate all or any of his powers and functions under this Act, other than this power of delegation, to a Fire Officer.
- (2) A delegation under subsection (1) is revocable in writing at will and does not prevent the exercise by the Minister of any power or function.

**7 Delegation of powers to Officer Commanding a Police District.**

The Minister may, by writing under his hand, delegate all or any of his powers and functions under this Act, other than this power of delegation, to any Police Officer in Command of a Police District outside the limits of Nuku'alofa for the express purpose of protection of life and property in case of fire, if that Police District is a fire area and there is no Fire Service in accordance with section 4 of this Act.

**8 Appointment and or secondment.**

- (1) The Minister may, with the consent of Cabinet, appoint persons to be Officer, firemen, volunteer firemen or part-time firemen. Members enrolled in the Tonga Police Force under the provisions of the Police Act may likewise be seconded to the Fire Service for any period to be defined by Cabinet on the recommendation of the Minister. Any member so seconded shall not lose any pension benefits or other service privileges by the mere fact of such secondment.
- (2) All such Officers and firemen shall be vested with all the powers and privileges of constables, Subordinate Officers and Commissioned Officers, of equivalent rank, under the provisions of the Police Act Regulations and other orders then in force and shall be subject to the same discipline and orders.

- (3) A volunteer fireman or part-time fireman present at a fire on authorised duty shall have all the powers, function, duties, responsibilities and privileges of a fireman.

## **PART III. - POWERS OF FIRE SERVICE**

### **9 Action on alarm.**

A fire service, upon alarm of fire shall, notwithstanding anything to the contrary in any law in force in the Kingdom or a part of the Kingdom contained, proceed with all speed to the place where the fire is and endeavour by all possible means to extinguish the fire and to save such lives and property as are, or is, in danger.

### **10 Powers of Brigade Senior Fire Member at scene of fire.**

The senior member of a fire service present at a fire —

- (a) has full power to control and direct the members of all Fire Brigades engaged at the fire and all persons who there place their services at his disposal;
- (b) may either alone or with others under his command enter and, if necessary, break into a building, vehicle, aircraft or vessel which is on fire or in the vicinity of the fire for the purpose of taking such steps as he thinks necessary for extinguishing or preventing the extension of the Fire;
- (c) may remove or cause to be removed from land, or a building, vehicle, aircraft or vessel referred to in the last preceding paragraph, without responsibility for any consequent loss or damage, any inflammable, explosive or dangerous material found in or on that land, building, vehicle, aircraft or vessel;
- (d) may, for the purpose of extinguishing or preventing the extension of the fire, cause any building which is on fire on or in the vicinity of the fire to be pulled down wholly or partially or otherwise destroyed or damaged;
- (e) may cause a street, thoroughfare or public place in the vicinity of the fire to be closed to traffic during the continuance of the fire;
- (f) may, for the purpose of extinguishing the fire, without payment, use or cause to be used any water mains, pipes, pumps or hydrants and all water therein or in any well, tank or stream and may cause water to be shut off from any main or pipe in order to obtain a greater pressure or supply of water;

- (g) may, without responsibility for any consequent loss or damage, shut off or disconnect or cause to be shut off or disconnected, or order a person having the control thereof to shut off or disconnect, the supply of electricity to a building which is on fire or in the vicinity of the fire;
- (h) may remove, or order a member of a Fire Brigade to remove a person, vehicle or thing who or which, by his or its presence or otherwise, in his opinion interferes or is likely to interfere with the operations of a Fire Brigade engaged at the fire;
- (i) may, at the time of the fire, or afterwards, cause to be pulled down or shored up a wall or building damaged or likely to be damaged by fire which, in his opinion is, or is likely to become, dangerous to life or property;
- (j) may take possession of a vessel at or near a wharf when that vessel or wharf is on fire or in the vicinity of the fire, and cause the vessel to be removed or, if it is necessary for the purposes of controlling, extinguishing or preventing the extension of the fire, sunk;
- (k) without responsibility for any consequent loss or damage, may take and keep possession for safe custody for any period not exceeding 7 days of property which is found on the land, building or vessel where the fire has occurred;
- (l) may cause the debris of the fire and any land, building, vehicle, aircraft or vessel where the fire occurred to be searched and may remove and keep possession of materials which, in his opinion, may tend to prove the origin of the fire;
- (m) may take such measures as appear to him to be necessary or expedient for the protection of life and property; and
- (n) generally may do all such other things as are reasonably necessary for controlling, extinguishing or preventing the extension of the fire.

## 11 Police to assist.

All members of the Police Force present at a fire shall support and assist the senior member of a Fire Brigade there present in the maintenance of his authority and in enforcing due obedience to his orders.

## 12 Fire outside fire area.

On the occurrence of a fire outside the fire area for which a Fire Brigade is established, the senior officer on duty in that fire area may proceed with the Fire

Brigade of which he is in charge to the place where the fire has occurred and assist in extinguishing the fire.

### **13 No liability to attach to Minister or member of Fire Brigade**

Damage to property occasioned by a member of a Fire Brigade or any person in the bona fide exercise of his duty at a fire shall be deemed damage by fire within the meaning of a policy of insurance against fire covering the damaged property and within the meaning of this Act and regulations made thereunder.

### **14 Award for bravery.**

Awards may be recommended by the Minister to Privy Council for acts of bravery beyond the call of duty, to be bestowed upon any member of the fire service or, in the event of his death, to be presented to his relatives.

## **PART IV. - FIRE PREVENTION**

### **15 Power to assess fire risk.**

- (1) The Minister or any Fire Officer so directed by him shall have, in addition to the powers of an officer under this Act, free fire access at all reasonable times, either alone or with others under his command, to any land or building in a fire area, other than a private residence, for the purpose of ascertaining whether there exists in or on that land or building any potential danger to life or property from fire.
- (2) Where the Minister or any Fire Officer so directed by him, is of the opinion that a potential danger to life or property from fire exists in or on any land or building in a fire area, other than a private residence, he may, by notice in writing to the owner or occupier of that land or building, require the owner or occupier to abate that danger within such time and in such manner as is specified in the notice and may, for the meantime, prohibit or restrict the occupation or use of the land or building, either absolutely or subject to such conditions as he may think fit.
- (3) A person aggrieved by a notice, prohibition or restriction under subsection (2) may appeal to the Magistrate's Court against the requirements of the notice or the prohibition or restriction within 7 days after its receipt or within such further time as the court allows.
- (4) On hearing an appeal under subsection (3), the court shall inquire into the matter and may —
  - (a) adjourn the hearing from time to time;

- (b) affirm, disallow or vary the notice, prohibition or restriction; or
  - (c) make such further or other orders as to costs or otherwise as to it seems just.
- (5) Any person who fails to comply with the requirements of a notice given under subsection (2) within the time specified, or, on appeal, with any variation which the Court may direct, commits an offence and is liable on conviction to a fine not exceeding \$40.
- (6) Any person who occupies or uses land in contravention of the conditions of prohibition or restriction imposed by a notice given under subsection (2) of this section until such time as the Minister or any Fire Officer so directed by him lifts the prohibition or restriction or an appeal under subsection (3) is upheld, commits an offence and is liable on conviction to a fine not exceeding \$200 and, where the contravention is a continuing offence, to a fine not exceeding \$10 for each and every day the offence continues.
- (7) Where any person to whom a notice is given under subsection (2) of this section fails to comply with the requirements of the notice within the time specified in the said notice or, if the notice is appealed against and is varied, within such time and in such manner as the court directs, the Minister may cause the necessary works to be executed at the expense of that person and all costs and expenses incurred in and about the execution and completion of those works are recoverable by the fire service department from that person as a debt.

## **16 Liability for cost of fire-fighting and damage.**

- (1) Subject to subsection (2), if —
- (a) a person has failed to comply with the requirements of a notice under section 15(2); and
  - (b) a fire occurs on the land or in the building the subject of the notice, that person is liable to pay, in addition to any penalty to which he may be liable under this or any other Act in force in the Kingdom:
    - (i) the expenses incurred in fighting or extinguishing the fire and in saving or attempting to save lives and property endangered by the fire; and
    - (ii) the amount of damage done to property by the fire.
- (2) The provisions of subsection (1) do not apply if the person proves that the fire was not a result of the failure to comply with the notice.
- (3) The provisions of subsection (1) of this section apply whether or not an appeal is made under section 15, unless a successful appeal is made.

- (4) A reference in subsection (1) of this section to a notice under section 15 shall be deemed to include a reference to any such notice as varied under that section.

### **17 Setting fire to crops etc. by negligence.**

Any person who negligently sets fire to —

- (a) a crop of cultivated produce whether standing or cut; or
- (b) a crop of hay or grass whether the natural or indigenous product of the soil or not and whether under cultivation or not and whether standing or cut; or
- (c) any standing trees, saplings or shrubs whether indigenous or cultivated,

and thereby injures or destroys the property of any other person, commits an offence and is liable on conviction to imprisonment not exceeding 2 years if the value of the damage does not exceed \$20 and to imprisonment not exceeding 5 years if the value of the damage exceeds \$20.

### **18 Clearing fences of inflammable material in fire-risk areas.**

(1) If —

- (a) the occupier of any land in a fire-risk area clears it of inflammable material for the space of 5 metres from a fence dividing the land from the land of any other owner or occupier;
- (b) the other owner or occupier neglects or omits so to clear his land; and
- (c) damage from the fire happens to the dividing fence through that neglect or omission,

the owner or occupier so neglecting or omitting to clear shall at his own cost and charges cause the fence to be repaired and re-erected within the space of one month after it has been so damaged.

- (2) If the owner or occupier so neglecting or omitting to clear, refuses or omits to repair or re-erect the fence within the space of one month from the date of the damage, the owner or occupier of the land contiguous to the fence who has cleared the land of inflammable material in accordance with subsection (1) may repair or re-erect the dividing fence, and recover all sums of money expended thereon from the owner or occupier in default as a debt.

**19 Fire-risk areas.**

The Minister may, with the approval of Cabinet, declare, by notice in the Gazette, an area or areas to be known as fire-risk areas under this Act.

**20 Boundaries to be kept clear of inflammable materials in fire-risk areas,**

Any person who, being the occupier or if there be no occupier, the owner, of land in a fire-risk area fails to clear such land and keep it clean of inflammable grass, rubbish or other such materials for the space of 5 metres from the boundaries of such land, commits an offence and is liable on conviction to a fine not exceeding \$20.

**21 Power to enforce clearing of land boundaries in fire-risk areas.**

- (1) Where the owner or occupier of land in a fire-risk area fails to clear land as required by section 20, a fire officer, or commissioned officer of the Police Force may, by force and with assistance if necessary, enter and clear the land and keep it clear of inflammable grass, rubbish and other such materials for the space of 5 metres from the boundaries of the land and the expense of so doing may be recovered from the occupier, or if there be no occupier, from the owner, as a debt.
- (2) Nothing in subsection (1) affects the liability of a person under section 20.

**22 Destroying bridge or culvert.**

Any person who, by carelessness in the use of fire, in any way injures or destroys a bridge or culvert (whether over a stream of water or not) or an approach thereto, or a causeway or crossing along or over a public road, is guilty of an offence and is liable on conviction to a fine not exceeding \$20.

**23 Fire under wooden bridge.**

A person who lights a fire under a wooden bridge or wooden culvert over, upon or under a road is guilty of an offence, and is liable on conviction to a fine not exceeding \$10.

**24 Compensation.**

Subject to section 13, this Act shall not take away or interfere with the right of a person to sue for and recover at common law or otherwise compensation for or

in respect of any damage or injury occasioned by the reckless or negligent use of fire.

## **25 Authority to cease.**

When any member of a Fire Service ceases to be a member, all authority vested in him as a member shall cease.

## **26 Badges or distinguishing marks.**

Badges, uniforms or other distinguishing marks or articles as the Minister may determine shall be provided for members of Fire Services, and a person who wears or bears about him any such badge or other distinguishing mark or article shall, unless the contrary be proved, be deemed to be a member of a Fire Service.

## **27 Obstruction.**

- (1) Any person who wilfully or negligently hinders or obstructs any member of a Fire Brigade in the performance of his duty is guilty of an offence and is liable on conviction to a fine not exceeding \$50.
- (2) Any person who wilfully or negligently interferes with or damages any fire-fighting apparatus or hose being used or kept for the purpose of being used in connection with a fire or the prevention or control of fire generally is guilty of an offence and is liable on conviction to a fine not exceeding \$50.

## **28 False alarm.**

Any person who wilfully gives a false alarm of fire is guilty of an offence and is liable on conviction to a fine not exceeding \$50 and/or imprisonment not exceeding 3 months.

## **29 Inducement to neglect.**

Any person who induces, or attempts to induce, any member of a Fire Brigade to neglect or omit to perform any duty is guilty of an offence and is liable on conviction to a fine not exceeding \$50 or to imprisonment not exceeding 6 months.

**30 Inducement to withhold services.**

Any person who induces or attempts to induce or does an act calculated to induce any member of a Fire Brigade to withhold his services or to commit a breach of discipline is guilty of an offence and is liable on conviction to a fine not exceeding \$50 or to imprisonment not exceeding 6 months.

**31 Unlawful possession of badge or uniform.**

Any person who, not being a member of a Fire Brigade, shall have without lawful excuse (the proof whereof shall lie upon him) in his possession a badge or uniform, or part of a uniform, of a member of a Fire Brigade, or shall assume the description or designation of, or falsely pretends or represents himself to be, a member of a Fire Brigade is guilty of an offence and is liable on conviction to a fine not exceeding \$20 or to imprisonment not exceeding 3 months.

**32 Unlawful wearing of uniform,**

Any person who, not being a member of a Fire Brigade, unlawfully wears the uniform of a member of a Fire Brigade, or a colourable imitation thereof, is guilty of an offence and is liable on conviction to a fine not exceeding \$20 or to imprisonment not exceeding 3 months.

**33 Unlawfully supplying uniform.**

Any person who unlawfully —

- (a) sell or supplies to another person; or
- (b) employs or induces another person, not being a member of a Fire Brigade, to wear the uniform of a member of a Fire Brigade, or a colourable imitation thereof

is guilty of an offence and is liable on conviction to a fine not exceeding \$50 or to imprisonment not exceeding 6 months.

## **PART V. - MISCELLANEOUS**

**34 Power to issue orders and general instructions.**

- (1) The Minister may issue such Orders and General Instructions as are in his opinion desirable in relation to the discipline and conduct of officers, firemen, volunteer firemen and part-time firemen.

- (2) Orders and General Instructions issued under subsection (1) may be of general application or limited to a specified Fire Brigade or fire area, or to a class of officer, fireman or volunteer fireman.

### **35 Power to make Regulations.**

The Minister with the approval of Cabinet may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and, in particular, providing for —

- (a) the enrolment of firemen and volunteer firemen;
- (b) the duties of firemen and volunteer firemen;
- (c) the efficiency and discipline of firemen and the punishment of offences against discipline by firemen;
- (d) the protection of life and property from fire in fire areas;
- (e) the provision of specialist services in connection with fire prevention or control to persons requiring them and the fees to be charged for such services; and
- (f) penalties not exceeding \$20 or imprisonment for 3 months for offences against or contraventions of the Regulations.

### **36 Magistrate's Court to have jurisdiction.**

All prosecutions for offences under this Act or under the regulations shall be tried in the Magistrate's Court for the District in which such offence is alleged to have been committed.