

AGRICULTURE

Cold Storage Works and Abattoirs Proclamation 50 of 1921.

Summary: This Proclamation places limits on the construction and operation of cold storage works used for the export of meat.

Amendments: The Proclamation is amended by Proc. 3/1923 (which repeals section 5), and Ord. 13/1928 (which repeals section 4).

Locust Suppression Proclamation 34 of 1923.

Summary: This Proclamation places certain requirements on the occupiers of land relating to the notice and destruction of locust eggs and “voetgangers”. Although it is technically still in force, it appears to have been superseded to some extent by the *Agricultural Pests Act 3 of 1973*, which deals with locusts in sections 16 and 17. The Proclamation is repealed by the Plant Quarantine Act 7 of 2008, which had not come into force as of 30 June 2010.

Amendments: The Proclamation was extended to the Rehoboth Gebiet by Proc. 30/1924.

Agricultural Pests Ordinance 11 of 1927.

Summary: This Ordinance deals with insect pests, plant diseases, bee diseases, and the importation of exotic animals. Although it is technically still in force, it appears to have been superseded to some extent by the *Agricultural Pests Act 3 of 1973*, which covers the same topics. The Ordinance is repealed by the Plant Quarantine Act 7 of 2008, which had not come into force as of 30 June 2010.

Amendments: The Ordinance is amended by Ord. 3/1928, Ord. 9/1938 and Ord. 8/1939. It was extended to the Rehoboth Gebiet by Proc. 12/1930.

Agricultural Produce Export Ordinance 13 of 1928.

Summary: This Ordinance regulates the export of agricultural produce and meat.

Amendments: The application of this Ordinance is affected by Proc. 62/1931. Section 23 is amended by Ord. 3/1936. The Ordinance was extended to the Rehoboth Gebiet by AG 12/1930.

Karakul Sheep Farming Industry Protection Proclamation 31 of 1930.

Summary: This Proclamation regulates the export of Karakul sheep capable of breeding.

Amendments: The Proclamation is amended by Ord. 11/1938, Proc. 24/1951 and Ord. 25/1952. It was extended to the Rehoboth Gebiet by Proc. 30/1963.

Tobacco Growers Protection Ordinance 2 of 1933.

Summary: This Ordinance regulates the importation and sale of tobacco used for farming purposes.

Amendments: The Ordinance is amended by Ord. 7/1933.

***Sugar Act 28 of 1936*, with some South African amendments.**

Summary: This Act provides for the control of the sugar industry and regulates sugar prices. Its present status in Namibia is unclear.

Applicability to SWA: Section 10(2), which was added by Act 17 of 1955, states that “This Act shall apply also in the territory”, which is defined in section 13 of the Act as “the Territory of South West Africa”.

This wording does not seem to make amendments to the Act automatically applicable to SWA. However, the amendments contained in Act 17 of 1955 may be applicable to SWA since it was that amending act which applied the principal Act to SWA. There was only one other amending act in South Africa -- the *Sugar Amendment Act 26 of 1958* -- which was not made expressly applicable to Namibia.

The Act was repealed in South Africa in its entirety by the *Sugar Act 9 of 1978* (dated 10 March 1978), which does not mention SWA. The Act had not been transferred to SWA at this stage. Therefore, it is not clear whether the Act was repealed in respect of SWA as well as in respect of South Africa.

Transfer of administration to SWA: If the Act continued to apply in SWA after its repeal in South Africa, the relevant transfer proclamation would have been the Executive Powers (Commerce) Transfer Proclamation, AG 28 of 1978, dated 28 April 1978.

Karakul Pelt Export Duty Proclamation 34 of 1939.

Summary: This Proclamation regulates the export of karakul pelts.

Amendments: The Proclamation is amended by Ord. 5/1941, Ord. 7/1943, Ord. 7/1953, Ord.13/1957 and Ord. 9/1965.

Cattle Improvement Consolidation Ordinance 14 of 1941.

Summary: This Ordinance makes provision for the establishment and regulation of “cattle improvement areas”.

Amendments: The Ordinance is amended by Proc. 14/1941.

Abattoirs Restriction Proclamation 8 of 1944.

Summary: This Proclamation places restrictions on the types of animals which can be slaughtered in abattoirs.

Bonemeal and Superphosphates Control Proclamation 37 of 1944.

Summary: This Proclamation controls the importation, sale and supply of bonemeal, bonemeal products and superphosphates. It is still in force, but there is some overlap with the provisions of the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947*.

Amendments: The Proclamation is amended by Proc. 33/1947.

***Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947*, as amended in South Africa to March 1978.**

Summary: This Act governs the registration, importation, sale and use of the items listed in the title.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 24 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of the Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated 2 March 1978.

Section 3(1)(b) of the transfer proclamation excluded section 2 of the Act (which deals with the designation of a Registrar of Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies by the Minister) from the operation of section 3(1) of the General Proclamation, meaning that this section of the Act continued to be administered by the South African Minister of Agriculture.

Section 3(1)(b) of the transfer proclamation also excluded the references to the “Republic” in sections 16(1) and 16(6)(a)(i) of the Act from the operation of section 3(1) of the General Proclamation, meaning that in these sections “Republic” retained the meaning it was given in the definition section of the Act (South Africa and SWA).

Section 3(1)(g) of the transfer proclamation exempted section 23 of the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 24 of 1977* (regarding promulgation of the Act by proclamation in the *Government Gazette*) from the operation of section 3(1) of the General Proclamation.

There was only one South African amendment to the Act after the date of transfer and prior to Namibian independence – the *Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Amendment Act 4 of 1980* – which was not made expressly applicable to SWA. This is the case despite the continuing definition of Republic to include SWA and despite the fact that some sections of the Act were excluded from transfer, as section 3(5) of the General Proclamation (as amended) states that:

No Act of the Parliament of the Republic

- (a) *which repeals or amends any law –*
 - (i) *passed by Parliament and which applies in the Republic as well as in the territory; and*
 - (ii) *of which any or all the provisions are administered by or under the authority of the Administrator-General or the Council of Ministers in terms of a transfer proclamation or any other law; and*
- (b) *which is passed after the commencement of such transfer proclamation or other law*

shall, notwithstanding any provision of a law referred to in paragraph (a) or any other law passed after the commencement referred to in paragraph (b) that the law referred to in paragraph (a) or any amendment thereof applies in the territory, apply in the territory, unless it is expressly declared therein or in any other law that it shall apply in the territory.

Amendments: The Medicines and Related Substances Control Act 13 of 2003 amends sections 1, 3, 7, 15, 23, and 26 and deletes section 7(2)(b).

Regulations: Prohibitions on certain types of farm feeds were issued in terms of section 7*bis* in GN 199/1998 (GG 1927) and GN 201/2003 (GG 3060).

Regulations concerning the registration of fertilizers, farm feeds, sterilizing plants and agricultural remedies are contained in GN 58/2007 (GG 3812), which repeals GN 202/2001. Regulations covering the same subject matter are contained in GN 112/2007 (GG 3863), which repeals GN 202/2001 and replaces GN 58/2007.

Related laws: See GN 179/2008 (GG 4088) for exemptions from the application of section 29 of the Medicines and Related Substances Control Act 13 of 2003 to certain substances registered under this Act.

Related international agreements: *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998*, which entered into force internationally on 24 February 2004; signature: 11 September 1998; deposit: 24 June 2005; effective date: 22 September 2005 (source: www.pic.int).

South West African Meat Industry Ordinance 39 of 1955.

Summary: This Ordinance provides for the control of the meat industry and establishes the South West Africa Meat Corporation. Although it is technically still in force, it appears to have been superseded in some respects by the Meat Trade Control Ordinance 20 of 1962, which was replaced by the Meat Industry Act 12 of 1981.

Amendments: Section 39 is repealed by Ord. 7/1958. See also Ordinance 8/1982 of the Representative Authority for the Whites.

Weeds Ordinance 19 of 1957.

Summary: This Ordinance provides for the eradication of plants which are identified as “weeds” by proclamation in the *Gazette*.

Dried Peas Control Ordinance 35 of 1957.

Summary: This Ordinance regulates the supply, sale and possession of dried peas with respect to “natives”.

Dairy Industry Act 30 of 1961, in part, as amended in South Africa to December 1977.

Summary: This Act governs the registration of dairy premises, the marketing of dairy products, and the dairy industry in general. Only the portions of the Act relating to margarine apply to Namibia.

Applicability to SWA: The Act was applied to SWA only in so far as it relates to margarine. Section 1 defines “Republic” as including the territory “in relation to margarine”. The “territory” is defined as “the territory of South West Africa, including the Eastern Caprivi Zipfel”. Section 35A states “This Act, and any amendment thereof which may be made from time to time, in so far as it relates to margarine or to a margarine factory, shall apply also in the territory.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation (AG 18/1977), dated 20 December 1977.

Section 3(1) of the transfer proclamation excluded section 13 of the Act (which deals with the sale of falsely marked dairy produce) from the operation of section 3(1) of the General Proclamation, meaning that in this section “Republic” retained the meaning it was given in the definition section of the Act.

There were no amendments to the Act in South Africa after the date of transfer and prior to Namibian independence.

Amendments: The Importation of Margarine Amendment Proclamation (AG 32/1978) amends section 15 to prohibit the importation of margarine into South West Africa without a permit from the Administrator-General. Section 15(3) is deleted by Act 6/1997.

Land Tenure Act 32 of 1966, as amended in South Africa to November 1977.

Summary: This Act establishes a Land Tenure Board and provides for the acquisition and development of land in connection with farming purposes.

Applicability to SWA: Section 10A., which was added by RSA Act 67 of 1970, states “This Act and any amendments thereof which may be made from time to time, with the exception of section 5, shall apply also in the territory”, which is defined as “the territory of South West Africa”. (Section 5 concerns the disposal of state land which is not required for or suitable for farming purposes in terms of the *State Land Disposal Act 48 of 1961*.)

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Credit and Land Tenure) Transfer Proclamation (AG 13/1977), dated 18 November 1977.

There were no amendments to the Act in South Africa after the date of transfer. The Act was repealed in South Africa by the *Second Community Development Amendment Act 68 of 1982*, which was not made expressly applicable to SWA.

Canned Fruit Export Marketing Act 100 of 1967, as amended in South Africa to April 1978.

Summary: This Act provides for the control and promotion of the marketing of canned fruit on export markets.

Applicability to SWA: Section 11 (as substituted by *Act 48 of 1971*) states that “This Act and any amendment thereof shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel”.

Transfer of administration to SWA: The administration of this Act (which was the responsibility of the Minister of Economic Affairs) was transferred to SWA by the Executive Powers (Commerce) Transfer Proclamation (AG 28/1978), dated 28 April 1978. There were no amendments to the Act in South Africa after the date of transfer.

The Act was repealed in South Africa by the *Marketing Amendment Act 79 of 1987*, which was not made expressly applicable to SWA.

Marketing Act 59 of 1968, as amended in South Africa to December 1977.

Summary: This Act regulates the production and sale of agricultural products, as well as the grading and standardisation of such products. It also establishes various boards and control bodies.

Applicability to SWA: Section 99(1), which was inserted by Act 78 of 1971, states “This act and any amendments thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.” Section 99(2) states “Any proclamation, regulation or notice issued or made under this Act prior to the commencement of the Marketing Amendment Act, 1971, and which does not apply in the territory immediately prior to such commencement, shall, subject to the provisions of this Act, not apply in the territory.” “Republic” is defined to include the “territory”, which is defined as “the territory of South West Africa”.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation (AG 18/1977), dated 20 December 1977.

The provisions of the Act which relate to the Karakul Scheme and the Wool Scheme published under the Act by Proclamation R.172 of 1968 and Proc. R.155 of 1972 were excluded from the operation of section 3(1) of the General Proclamation, meaning that they were not transferred to SWA.

The provisions of the Act relating to boards and control bodies relevant to these schemes were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of

persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”.

None of the amending acts in South Africa after the date of transfer were made expressly applicable to SWA. The *Marketing Amendment Act 79 of 1987* repealed section 99 of the Act (concerning applicability to SWA) in South Africa, but this amending Act was not made expressly applicable to SWA.

Amendments: The Meat Industry Act 12 of 1981 repealed the Act insofar as it relates to controlled products. The Karakul Pelts and Wool Act 14 of 1981 repealed the Act insofar as it relates to karakul pelts or wool. Act 19/1980 amends section 46D.

Regulations: The import of vegetable oil is governed by AG 31/1979 (as amended by AG 20/1986), which is issued under the authority of the principal Act. See also AG GN 112/1980, read together with Act 19/1980 (re: levies and regulations).

Agricultural Pests Act 3 of 1973, as amended in South Africa to March 1978.

Summary: This Act covers the registration of nurseries and the control and destruction of certain plants, insects and animals. It also regulates the importation of plants, insects, honey, honey bees and exotic animals. The Act is repealed by the Plant Quarantine Act 7 of 2008, which had not come into force as of 30 June 2010.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 36 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated 2 March 1978.

Section 3(1)(g) of the transfer proclamation excluded the reference to the “Minister” in section 15 of the Act (which concerns the payment of compensation) from the operation of section 3(1) of the General Proclamation, meaning that in this section “Minister” continued to refer to the South African Minister of Agriculture.

Section 3(2) of the transfer proclamation excluded all references to the “Republic” in the Act from the operation of section 3(1)(c) of the General Proclamation, meaning that “Republic” retained the meaning it was given in the definition section of the Act (South Africa and SWA).

Section 3(3) of the transfer proclamation excluded section 32 of the Act (which deals with appeals to the Minister) from the operation of section 4(1) of the General Proclamation, meaning that the Administrator-General was not authorised to delegate the powers transferred to him pursuant to this section of the Act.

There were no amendments to the Act in South Africa after the date of transfer. This Act was repealed in South Africa by the *Agricultural Pests Act 36 of 1983*, which was not made expressly applicable to SWA.

Regulations: Regulations concerning locusts are contained in AG GN 30/1989.

Regulations relating to importation permits and the lodging of appeals under section 32 of the Act are contained in GN 57/2007 (GG 3812).

Abattoir Industry Act 54 of 1976, as amended in South Africa to December 1977.

Summary: This Act covers a wide range of matters relating to abattoirs.

Applicability to SWA: Section 1 defines “the territory” as “the territory of South West Africa”. Section 75 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation (AG 18/1977), dated 20 December 1977.

Section 3(2) of the transfer proclamation provided that, notwithstanding section 3(2)(b) of the General Proclamation, references to the Minister of Agriculture in sections 3(1)(c) and (e) and sections 46(j) and (l) of the Act (which deal with certain powers and functions of the Abattoir Commission and the South African Abattoir Corporation), and in those sections relating to the National Marketing Council and the Agricultural Reference Board, should be construed as a reference to the Administrator-General.

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Livestock Improvement Act 25 of 1977, as amended in South Africa to March 1978.

Summary: This Act provides for the development and promotion of the livestock industry and regulates breeding. There is some question as to whether it has yet come into force in Namibia. The 1993 judgement of *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC) found that the Act had never been brought into operation in South West Africa or Namibia by proclamation, as section 38 of the Act requires. This case also found that the organs and procedures mentioned in section 16 must be in place before the Act can be operational.

Applicability to SWA: Section 1 defines “Republic” to include “the territory,” which is defined as “the territory of South West Africa”. Section 35 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.” However, section 38 stated that the Act would come into operation only on a date fixed by the State President by Proclamation in the Gazette.

Portions of the Act were brought into operation in South Africa as of 1 May 1979 by RSA Proc. R.80 of 1979. The Minister was acting in terms of section 38 of the Act, which was excluded from transfer to SWA, and so had the authority to bring the Act in force with respect to SWA. However, the Proclamation which brought the Act into force in RSA was arguably not applicable to SWA because it occurred after the date of transfer and yet made no explicit reference to SWA or to the consent of the SWA Administrator-General. Section 3(4) of the General Proclamation provides as follows:

(4) Any proclamation, regulation or rule which is issued or made after the commencement of any transfer proclamation by, or on the authority of, the State President or Minister under a law which at such commencement applies both in the territory and in the Republic, and which is published in the Government Gazette of the Republic, shall, notwithstanding the provisions of subsection (1) apply in the territory if such proclamation, regulation or rule or the notice by which it is so published, contains a statement that it was or is issued or made with the consent of the Administrator-General, and applies also in the territory: Provided that for the purposes of the application of such proclamation, regulation or rule in the territory, the provisions of subsection (1) shall apply.

A possible counterargument might be that the Act did not “apply” in both RSA and SWA before it was brought into force and so did not fall under section 3(4). However, it should be noted that the post-independence case of *S v Loft-Eaton & Others (1)* 1993 NR 370 (HC) (discussed below) drew a distinction between “applying” and being “operative”, and found that the Act is not actually in force in Namibia.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated 2 March 1978.

Section 3(1)(h) of the transfer proclamation excluded section 4(1) and the references to the “Minister” in section 33 and section 38 of the Act from the operation of section 3(1)(c) of the General Proclamation. Section 3(2) of the transfer proclamation excluded the Act from the operation of section 3(1)(c) of the General Proclamation, meaning that “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

The provisions of the Act relating to the Advisory Board for Animal Production were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”.

There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Livestock Improvement Amendment Act 31 of 1984* -- which was not made expressly applicable to SWA. (This amending Act does not apply to SWA despite the continuing definition of Republic to include SWA, by virtue of section 3(5) of the General Proclamation, as amended.)

Amendments: The Act is substantially amended by Act 25/1993, which establishes a Livestock Improvement Board. However, Act 25/1993 does not repeal section 38, which requires that a date for the commencement of the Act be set by a Proclamation of the State President, nor does it otherwise expressly bring the primary Act into force.

Regulations: The nature of some of the notices issued under the Act indicates that Government believes the Act to be operative. However, we have not been able to locate any legal instrument bringing the Act into force in Namibia in light of the ruling in *S v Loft-Eaton & Others (1)* 1993 NR 370 (HC).

See AG GN 61/1979, concerning kinds and breeds of animals to which the Act applies.

Regulations regarding artificial insemination, etc. are contained in GN 60/1993 (GG 653).

Notices have been issued under this Act in 2005 (GN 61/2005, GG 3439) and 2006 (GN 172/2006, GG 3721), issuing certificates of incorporation to livestock breeders' societies.

The dorper breed is declared to be a breed of animal in Namibia in GN 238/2009 (GG 4391). The Gellaper breed is declared to be a breed of animal in Namibia in GN 63/2010 (GG 4451).

Cases: *S v Lofty-Eaton & Others (1)* 1993 NR 370 (HC).

The relevant passage is quoted here at length as it may be relevant to the applicability of other South African statutes which mention "South West Africa":

The problem is that s 35 applied the Act to Namibia, but did not make it operative in Namibia because s 38 of the said Act provided:

- '(1) This Act shall be called the Livestock Improvement Act, 1977, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.
- (2) Different dates may be fixed under s (1) in respect of different provisions of this Act.'

The proclamation which put part of the said Act into operation was Proc R80 of 1979, but only in South Africa. It must be assumed that the State President deliberately did not put the Act into operation in Namibia. He could have done so by merely stating in Proc R80 of 1979 that Proc R80 of 1979 applies in the territory of South West Africa, and is made with the consent of the Administrator-General.

Even in South Africa the said Livestock Improvement Act was passed and assented to by the State President and published in Government Gazette 5462 of 23 March 1977. Part of it was, however, only put into operation in South Africa by Proc R80 of 1979 on 1 May 1979.

The question is why? Again the answer is obvious. It was provided for in the Act itself that a large number of administrative organs and the appointment of officials to carry on the day-to-day administration of the Act would be in place once it, or a relevant part of it, would come into operation. So, for example:

- (a) The Minister had to appoint 16 members to the Advisory Board in s 3 of that Act, of which two had to be officers of the Department of Agriculture and one had to be an officer of the Department of Agriculture, Economics and Marketing.
- (b) The Minister had to appoint a Registrar in terms of s 4 of that Act.
- (c) The Registrar had to invite a list of names of three persons to be submitted to him by each one of the 13 associations, Boards or companies contemplated in s 3(2)(b)(i)-(xiii).
- (d) The Minister had to appoint the executive committee of the Studbook Association and the other committees contemplated in s 3(5)(c)(i)-(iii) read with s 16(2)(b).
- (e) A register had to be prepared as contemplated in s 5 of the Act.
- (f) Notices as contemplated in s 2 and regulations contemplated in s 34 had to be prepared to be ready for promulgation before, on or shortly after the date on which the Livestock Improvement Act had to come into operation.
- (g) The application forms in terms whereof one could apply for -
 - (i) registration as an inseminator;
 - (ii) registration of premises as an artificial insemination centre;
 - (iii) a certificate for the approval of an animal to collect semen;
 - (iv) the renewal of a registration of an artificial insemination centre;
 - (v) the renewal of certificates in respect of animals for the collection of ova, and the like - see, for example, the numerous forms and certificates contemplated in Schedules I-XVI of Government Gazette 6416, dated 27 April 1979.

It is important to note that, when a law provides for certain organs and procedures to be established without which the Act cannot be implemented properly, the Legislature usually

provides that the law will only become 'operative', as distinguished from 'applicable', on a date to be determined by the President, Administrator, Minister or similar entity by proclamation or notice in the Gazette.

The Legislature that enacts an Act may even provide for bringing different parts of an Act into operation on different dates, as was the case in the Livestock Improvement Act, 1977. This last procedure should of course only be used if the various sections or parts of such an Act are severable and would not be applicable to s 16(1) and (2)(a) and (b) of the Livestock Improvement Act 1977 and its various parts.

That an Act is capable of being administered (notwithstanding the fact that it has not as yet come into operation) is furthermore explicitly envisaged in s 12(3) of the Interpretation of Laws Proclamation 37 of 1920, which provides as follows:

'(3) Where a law confers a power -

- (a) to make any appointments; or
- (b) to make . . . rules, regulations or by-laws; or
- (c) to give notices; or
- (d) to prescribe forms; or
- (e) to do any other act or thing for the purpose of the law,

that power may, unless the contrary intention appears, be exercised at any time after the passing of the law so far as may be necessary for the purpose of bringing the law into operation at the commencement thereof, subject to this restriction that any instrument . . . rules, regulations or by-laws made . . . under the power shall not . . . come into operation until the law comes into operation.' (My emphasis.)

See also s 14 of the equivalent South African Act 33 of 1957, and *S v Manelis* 1965 (1) SA 748 (A) at 753.

It is common cause between the State and defence that at the time of the alleged offences, ie in April 1993, about six years after the Act was passed, the crucial organs and procedures for receiving, considering and deciding applications for written authorisation to import, as provided for in s 16 of the said Act, had still not been established in Namibia.

Mr Small is correct in contending that the Administrator-General had the power himself to declare the Act operative in Namibia, but for that an AG proclamation expressly stating that the Act is operative from a certain date would have been necessary. I do not understand Mr Small to contend that such an AG proclamation was ever issued.

In conclusion on this issue I must point out that the provision in an Act of Parliament that the date of operation is to be decided on and promulgated by an organ of the Executive may be regarded as an administrative function or as delegated legislation or a combination of both. In all instances, however, the decision to declare operative, and the declaration itself, must comply with the provisions of the enabling Act, and must in itself be reasonable and not ambiguous, particularly where it provides for criminal offences and criminal sanctions for non-compliance with the provisions of the Act.

To declare an Act operative, when essential organs or procedures for complying with the law and for avoiding a contravention and avoiding criminal sanctions are not yet established, appears to me not only to be *ultra vires* the enabling Act but in conflict with art 18 of the Namibian Constitution. See also art 21 of the Namibian Constitution; Steyn Die Uitleg van Wette 5th ed at 238-49.

Even if the State President, or the Administrator-General in this instance, declared the Act as a whole or parts of it operative at any point in time, when the organs and procedures to be set up under s 16 were not yet established, it seems to me that such declaration would in itself be *ultra vires* or unconstitutional, particularly insofar as it purported or purports to make s 16(1) and 16(2)-(8) of the said Act operative.

Meat Industry Act 12 of 1981.

Summary: This Act establishes a meat board and sets forth its objects, powers, duties and functions. It also provides for control over the grading, sale, import and export of livestock, meat and meat products, and the levies on these items. It was brought into operation by AG 30/1981.

Amendments: Prior to independence, the Act was amended by Act 3/1987 and AG

GN 20/1983. See also the Swameat Corporation Ordinance 2 of 1986 of the Legislative Assembly of the Whites (which has since been repealed by the Meat Corporation of Namibia Act 1 of 2001).

Act 21/1992, which was brought into operation by GN 125/1992 (GG 482), amends sections 1, 2, 4, 8, 10, 12 and 21, inserts section 10A, and substitutes certain expressions and the long title to make the Act consistent with an independent Namibia and to extend the powers of inspectors in certain circumstances.

The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 4 and 8, and deletes sections 5, 7(1) and 15.

Regulations: Regulations are contained in General Notice 8/1982, as amended by General Notice 90/1982 (GG 3620).

Regulations are also contained in GN 110/1992 (GG 468), GN 126/1992 (GG 482), and General Notice 3/1993 (GG 567) (record-keeping).

Levies are contained in GN 4/1992 (GG 336), GN 93/1992 (GG 449), GN 127/1992 (GG 482), GN 120/1993 (GG 875), GN 227/1994 (GG 985), GN 116/2005 (GG 3498), GN 62/2006 (GG 3620), GN 114/2006 (GG 3672), GN 210/2006 (GG 3746) and GN 119/2007 (GG 3869).

GN 94/2007 (GG 3841) prohibits the import and export of certain controlled products.

A notification of measures to promote the interests of the meat industry in Namibia is contained in General Notice 115/2004 (GG 3214).

Prohibitions relating to abattoirs, factories and refrigeration plants of unregistered producers are addressed in General Notice 91/2006 (GG 3620).

Karakul Pelts and Wool Act 14 of 1982.

Summary: This Act establishes a Karakul Board and regulates classification, sale, marketing, packing, and the import and export of karakul pelts and wool. It was brought into operation by AG 30/1982.

Amendments: This Act is amended by Act 15/1986 and Act 22/1986. The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends sections 4 and 8, and deletes sections 5, 7(1) and 16.

Regulations: A levy and a special levy on wool are contained in GN 117/1991 (GG 289), replaced by GN 87/2002 (GG 2754). A levy and special levy on karakul pelts are contained in GN 40/2010 (GG 4440), as corrected by GN 66/2010 (GG 4451).

Control of the Importation and Exportation of Dairy Products and Dairy Product Substitutes Act 5 of 1986.

Summary: This Act controls the import and export of dairy products and dairy

product substitutes.

Prevention of Undesirable Residue in Meat Act 21 of 1991.

Summary: This Act controls the administration of certain products to animals which may cause undesirable residue in meat and meat products, and further regulates the marketing of meat and meat products. It came into force on 28 November 1994 (Proc. 29/1994, GG 975).

Amendments: Act 11/1994 amends sections 1 and 2.

Regulations: Regulations are contained in GN 219/1994 (GG 975). Prohibited substances are listed in GN 220/1994 (GG 975).

Agronomic Industry Act 20 of 1992.

Summary: This Act establishes the Namibian Agronomic Board and sets forth its powers and functions. It came into force on 5 October 1992 (Proc. 33/1992, GG 496).

Amendments: The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 1, 4, 5, 7, 8 and 15. (The State-owned Enterprises Act inconsistently refers to this Act as the “Agronomic Industry Act” in Schedule 1 and the “Namibian Agronomic Industry Act” in Schedule 2. The correct name is the Agronomic Industry Act. However, it establishes the “Namibian Agronomic Board”.)

Regulations: Agronomic crops are addressed in GN 45/1993 (GG 626), GN 293/1996 (GG 1435), GN 146/2002 (GG 2802) and GN 109/2008 (GG 4047).

Controlled products levies have been announced from time to time in terms of section 18(3) of the Act. The most recent such levies are contained in GN 145/2002 (GG 2802), GN 147/2002 (GG 2802), GN 116/2003 (GG 2990) and GN 111/2008 (GG 4047).

Regulations relating to the grading and classification of maize are contained in GN 71/1994 (GG 854). Standards for maize products are contained in GN 72/1994 (GG 854).

The importation of certain products without a permit is prohibited by GN 101/2006 (GG 3661) and GN 110/2008 (GG 4047).

Stock Brands Act 24 of 1995.

Summary: This Act consolidates and amends the laws relating to the branding of stock. It came into force on 9 April 1999 (GN 57/1999, GG 2078).

Amendments: Act 7/2001 inserts sections 20A and 21A and amends section 22.

Regulations: Regulations are contained in GN 73/2004 (GG 3187), which repeals the regulations in GN 58/1999 (GG 2078). GN 72/2004 (GG 3187) declares sheep and goats to be stock in terms of section 2. Regulation 7 is amended by GN 39/2007 (GG

3799) and GN 239/2009 (GG 4391).

Meat Corporation of Namibia Act 1 of 2001.

Summary: This Act establishes the Meat Corporation of Namibia (“Meatco”) to establish and manage abattoirs and other meat factories. This law replaces the Swameat Corporation Ordinance 2 of 1986 of the Legislative Assembly of the Whites. It came into force on 3 May 2001 (GN 80/2001, GG 2521).

Amendments: Act 21/2004 amends sections 5 and 9 and inserts section 30A. The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 1, 5, 7, 9 and 12, and substitutes section 8.

Appointments: The Board of Directors is announced in GN 182/2001 (GG 2607).

Agricultural Bank of Namibia Act 5 of 2003.

Summary: This Act provides for the Agricultural Bank of Namibia (Agribank), replacing the *Agricultural Bank Act 13 of 1944*. It came into operation on 15 November 2003 (GN 225/2003, GG 3092).

Amendments: Act 22/2004 amends sections 7, 8, 16, 22 and 29 and substitutes section 10. The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), substitutes section 7, and amends sections 8, 10, 11, 16 and 17.

Regulations: Certain activities are declared to be “activities related to agriculture” as defined in section 1 of the Act in GN 109/2006 (GG 3672).

Cases: The following cases involve previous legislation—

Du Plessis v Government of the Republic of Namibia 1994 NR 227 (HC) (section 10 of the previous *Agricultural Credit Act 28 of 1966* and section 23 of the *Agricultural Bank Amendment Act 27 of 1991*, which amended the previous *Agricultural Bank Act 13 of 1944*).

Articles:

Sidney Harring and Willem Odendaal, “*One Day We Will All Be Equal*”: *A Socio-Legal Perspective on the Namibian Land Reform and Resettlement Process*, Legal Assistance Centre, 2002, available at www.lac.org.na/projects/lead/Pdf/oneday.pdf.

Legal Assistance Centre, *Our Land We Farm: An analysis of the Namibian Commercial Agricultural Land Reform Process*, 2005, available at www.lac.org.na/projects/lead/Pdf/landwefarm.pdf

Sidney L Harring and Willem Odendaal, “*No Resettlement Available*”: *An assessment of the expropriation principle and its impact on land reform in Namibia*, Legal Assistance Centre, 2007, available at www.lac.org.na/projects/lead/Pdf/exprorep.pdf

Wolfgang Werner and Willem Odendaal, *Livelihoods after Land Reform*, Legal Assistance Centre, 2010, available at www.lac.org.na/projects/lead/Pdf/livelihoods_report_a.pdf and www.lac.org.na/projects/lead/Pdf/livelihoods_report_b.pdf.

Related international agreements: *Agreement Establishing the International Fund for Agricultural Development, 1976* (accession: 16 October 1992).

COMMISSIONS

Commission of Inquiry into the Meat Industry in South West Africa (AG 1/1984).

MISCELLANEOUS

Grading standards for whole and decorticated pearl millet (mahangu) grains are published for general information for prospective buyers and sellers in General Notice 89/2000 (GG 2353).

INTERNATIONAL LAW

International Agreement for the Creation of an International Office for dealing with Contagious Diseases of Animals, Paris, 1925

effective date of accession: 10 December 1990

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>)

Constitution of the Food and Agriculture Organization of the United Nations, 1945

effective date in respect of Namibia: 1 December 1977

(source: Environmental Treaties and Resource Indicators Service, <http://sedac.ciesin.org/entri>.)

International Plant Protection Convention, 1951

ratification approved by Parliament: 20 October 2005

deposit: 23 February 2007 (source: www.fao.org/Legal/TREATIES/004s-e.htm)

Phyto-Sanitary Convention for Africa, 1967

(not yet in force within the AU)

ratification by Parliament: 20 October 2005 (source: Parliament)

deposit: none recorded on African Union website (source: www.africa-union.org)

International Treaty on Plant Genetic Resources for Food and Agriculture, 2001

signature: 9 November 2001

ratification approved by Parliament: 23 June 2004 (source: Parliament)

deposit: 7 October 2004 (source: www.fao.org/Legal/TREATIES/033s-e.htm)

See also **ANIMALS**.

See also Stock Theft Act 12 of 1990 (**CRIMINAL LAW AND PROCEDURE**).

See also **ENVIRONMENT**.

See also minimum wage for agricultural industry under Labour Act 11 of 2007 (**LABOUR**).

See also Agricultural (Commercial) Land Reform Act 6 of 1995 (**LAND**).

See also Aquaculture Act 18 of 2002 and Inland Fisheries Resources Act 1 of 2003 (**MARINE AND FRESHWATER RESOURCES**).