

ALCOHOL, DRUGS AND TOBACCO

Brewers & Distillers Licences Duty Proclamation 3 of 1924

Summary: This Proclamation ([OG 127](#)) provides for the payment of licence duties by brewers of beer and distillers of wine, brandy and spirits. It was extended to the Rehoboth Gebiet by Proc. 12/1930 ([OG 365](#)).

Repeals: The Proclamation repeals Proclamation 18 of 1915 of the Military Governor of the Protectorate of South West Africa, dated 20 October 1915 ([OG 4](#)).

Amendments: This Proclamation is amended by Ord. 9/1935 ([OG 613](#)), Ord. 14/1937 ([OG 716](#)), Ord. 1/1938 ([OG 744](#)) and the Liquor Licensing Amendment Ordinance 47 of 1952 ([OG 1732](#)). The Liquor Act 6 of 1998 ([GG 1843](#)), which was brought into force on 22 December 2001 by GN 250/2001 ([GG 2670](#)), amends sections 1, 2, 3 and *3bis*.

Regulations: Regulations are authorised by section *3bis* of the Proclamation, which was inserted in 1937 and amended by the Liquor Act 6 of 1998 (with effect from 22 December 2001). There is no savings clause for anything done under the repealed proclamation. No pre-independence regulations have been located, and no post-independence regulations have been gazetted.

Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971, as amended in South Africa prior to Namibian independence

Summary: This Act ([RSA GG 3118](#)), which was brought into force in both South Africa and South West Africa on 6 December 1971 by RSA Proc. R.265/1971 ([RSA GG 3321](#)), restricts dealings in dependence-producing drugs and establishes rehabilitation centres for treatment of people with drug problems.

Repeals: The Act repeals the *Retreats and Rehabilitation Centres Act 86 of 1963* ([RSA GG 550](#)), which does not seem to have been applicable to SWA.

The Act has been interpreted by some as repealing the Combating of Alcoholism and Anti-social Conduct Ordinance 11 of 1965. Section 63(1) of the Act states:

Subject to the provisions of subsections (2) and (3), the Retreats and Rehabilitation Centres Act, 1963 (Act No. 86 of 1963), is, except in so far as it is necessary for the administration thereof by the Minister of Coloured Affairs in terms of Proclamation No. 57 of 1964, and the Ordinance for the Prevention and Combating of Alcoholism and Anti-social Conduct, 1965 (Ordinance No. 11 of 1965), of the territory, hereby repealed.

Although the wording may seem at first glance to be somewhat ambiguous, this provision appears to mean that Act 86 of 1963 is repealed – except insofar as that Act is relevant to the administration of the other two laws cited (Proc. 57 of 1964 and Ord. 11 of 1965). This interpretation is supported by the use of the verb “is....repealed” – which indicates that the provision refers to only a single repealed law – and by the placement of commas in the provision. Thus, it appears that Act 41 of 1973 does *not* repeal the Combating of Alcoholism and Anti-social Conduct Ordinance 11 of 1965, as has been assumed in some sources.

Applicability to SWA: Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”. Section 64 states “This Act and any amendment thereof shall apply also

in the territory, including the Eastern Caprivi Zipfel.” RSA Proc. R.266/1971 ([RSA GG 3321](#)) also makes specific reference to issues pertaining to applicability to the territory of South-West Africa.

Transfer of administration to SWA: Section 53 of this Act states that the State President may assign the administration of all or part of the Act to one or more South African Ministers. A race-based assignment of the administration of the Act was made by RSA Proc. R.266/1971 ([RSA GG 3321](#)), with administration being divided between the Minister of Bantu Administration and Development (for “Bantus” in South Africa or “natives” in SWA), the Minister of Indian Affairs (for “Indians”), the Minister of Coloured Affairs (for “Coloured persons”) and the Minister of Social Welfare and Pensions (for all other persons).

The administration of this Act was partially transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977) dated **28 September 1977**, as amended. This transfer proclamation applies to matters which were administered by the South African Minister of Bantu Administration and Development, and the South African Minister of Coloured, Rehoboth and Nama Relations. Section 3(2)(e) of the transfer proclamation excluded sections 12 and 50(1) of the Act from the operation of section 3(1) of the General Proclamation.

The administration of this Act was further transferred to SWA by the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated **30 November 1977**, and the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated **1 December 1977**. Both of these Transfer Proclamations excluded sections 12 and 50(1) of the Act, and the reference to the “Government of the Republic” in section 50(2) of the Act, from the operation of section 3(1) of the General Proclamation.

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

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *RSA Proclamation R.32 of 1972* ([RSA GG 3390](#))
- *RSA Proclamation R.263 of 1972* ([RSA GG 3682](#))
- *RSA Proclamation R.155 of 1973* ([RSA GG 3957](#))
- *Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act 80 of 1973* ([RSA GG 3971](#))
- *Medical, Dental and Supplementary Health Service Professions Act 56 of 1974* ([RSA GG 4445](#)), which was brought into force by RSA Proc. R.52/1975 ([RSA GG 4594](#))
- *RSA Proclamation 243 of 1975* ([RSA GG 4883](#))
- *RSA Proclamation 25 of 1976* ([RSA GG 4988](#))
- *RSA Proclamation R.141 of 1976* ([RSA GG 5237](#))
- *RSA Proclamation 239 of 1976* ([RSA GG 5328](#))
- *Abuse of Dependence-producing Substances and Rehabilitation Centres Amendment Act 14 of 1977* ([RSA GG 5446](#))
- *Criminal Procedure Act 51 of 1977* ([RSA GG 5532](#))
- *RSA Proclamation 277 of 1977* ([RSA GG 5789](#)).

Certain terminology in the Act was amended by Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979).

The Act was also amended prior to independence by Act 25/1987 ([OG 5462](#)).

Savings: There is a savings clause in section 63(3) which provides that any proclamation, regulation, rule, order, appointment, authorization, leave of absence or licence, issued, made, prescribed, given or granted and any other action taken under any provision of a law repealed by subsection (1), shall... be deemed to have been issued, made, prescribed, given, granted or taken under the corresponding provision of this Act.

If this Act did in fact repeal the Combating of Alcoholism and Anti-social Conduct Ordinance 11 of 1965, the regulations made in terms of that Act would survive pursuant to this savings clause. Since it is the view of the authors that this Ordinance has not in fact been repealed, the regulations made under that Ordinance are listed under the separate entry for that Ordinance in the section on HEALTH.

Regulations: Regulations are authorised by section 52 of the Act.

Pre-independence regulations issued in terms of this Act “in respect of White persons” are contained in RSA GN R.2166/1971 ([RSA GG 3323](#)), promulgated by the Minister of Social Welfare and Pensions and effective from 3 December 1971. These regulations are made explicitly applicable to SWA.²⁸ They are amended by RSA GN R.1812/1977 ([RSA GG 5733](#)), which was published prior to the relevant date of transfer, on 9 September 1977 and came into force on 1 October 1977, which was also prior to the relevant date of transfer (30 November 1977).²⁹

Additional regulations “in respect of Blacks” are contained in RSA Proc. R.1003/1973 ([RSA GG 3927](#)), promulgated by the Minister of Bantu Administration and Education acting on behalf of the Minister of Bantu Administration and Development in respect of Bantu, with effect from 15 June 1973. These regulations are also made explicitly applicable to SWA. The Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology in the regulations.

There are no post-independence regulations under this Act.

Rules: Rules relating to the proceedings of the National Advisory Board on Rehabilitation Matters are contained in RSA GN 1261/1972 ([RSA GG 3617](#)).

Cases:

S v Cachimbembo 1990 NR 290 (HC)

S v Mariu 1991 NR 149 (HC)

S v Kuvare 1992 NR 7 (HC)

S v Kharigub & Another 1992 NR 27 (HC)

S v Van Wyk 1992 NR 267 (HC)

S v Johnny & Another 1992 NR 296 (HC)

S v Maniping/S v Thwala 1994 NR 69 (HC)

S v Mteleni 1995 NR 127 (HC)

S v Mlambo 1997 NR 221 (HC)

S v Begley 2000 NR 112 (HC)

S v Sibonyoni 2001 NR 22 (HC)

S v Rooi 2007 (1) NR 282 (HC)

S v Sehako 2009 (1) NR 61 (HC)

S v Lipumbu 2009 (2) NR 546 (HC)

S v Paulo & Another (Attorney-General as amicus curiae) 2013 (2) NR 366 (SC).

S v January 2018 (1) NR 111 (HC) (identification of cannabis for purposes of a charge under section 2)

S v Swatz 2019 (1) NR 197 (HC) (sale of cannabis to primary school children; drug-related cases on the increase, which shows need for deterrent sentences)

...it is our considered opinion that there is a dire need for change in the courts' stance on drug related matters and to accord the necessary weight to the seriousness of the particular offence and its prevalence in society. To this end all possible evidence should be submitted in order to place the presiding officer in the best position to fully appreciate the offence before court and to impose an appropriate sentence. Though the personal circumstances of the accused should be accorded the necessary weight and taken into account, the nature and extent of the crime, as well

²⁸ These regulations withdraw RSA GN R.479/1964, as amended by RSA GN R.1629/1967, RSA GN R.1736/1967, RSA GN R.3299/1969, and SWA GN 182/1965 (OG 2670).

²⁹ In South Africa, the regulations were further amended *after the date of transfer* by RSA GN R. 584/1984 (RSA GG 9124). This amendment was not made explicitly applicable to SWA and so did not apply to SWA.

as the need of society to root out the evil of drugs in its midst, should equally be given proper consideration. In doing so, sentences should reflect the determination of our courts to play their part in curbing this evil that is only aimed at destroying human lives and the more vulnerable members of society like the youth. A clear and unequivocal message should emerge from the courts that crimes of this nature will not be tolerated any longer and sentences will henceforth be appropriately severe. (para 11)

S v Umub 2019 (1) NR 201 (HC) (in context of condonation application, court finds no prospect of success in appeal against 10-year sentence for possession of large amount of cannabis along with mandrax, after previous conviction on drug charge)

The fight against dealing in and possession of dependence and dangerous dependence producing substance must be intensified at all levels by the law enforcement agencies and the courts. It is on the increase and busy destroying our communities particularly the youth despite the heavy sentences imposed. The courts must step in and impose severe sentences, never heard of before, as we are losing the battle against drug abuse. The sentences to be imposed must be so severe to deter the appellant and would-be offenders from committing such offences. The sentence imposed in the prevailing circumstances is in my view not shockingly inappropriate but fit the prevailing circumstances. (para 12)

S v Noble & Another 2019 (2) NR 206 (HC) (consideration of bail in charge of dealing in cocaine)

S v Rooi 2019 (2) NR 479 (HC) (reclassification of methaqualone by *RSA Proclamation 277 of 1977 (RSA GG 5789)*, which is applicable to Namibia; separate convictions under section 2(a) for possession of different two dependence-producing substances is a duplication of convictions)

S v Hanse 2020 (2) NR 499 (HC) (*mens rea* is required for the offence of possession of dagga under section 2(b)).

Commissions: The National Drug Control Commission was established by Cabinet decision in 1999, to advise the government on drug policy and on the implementation of international conventions on drugs. Members of this Commission are announced in GN 202/2003 ([GG 3060](#)).

Related international agreements:

Convention on Psychotropic Substances, 1971

SADC Protocol on Combating Illicit Drug Trafficking in the Southern African Region, 1996

Single Convention on Narcotic Drugs, 1961

Protocol Amending the Single Convention on Narcotic Drugs, 1972

United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.

Liquor Act 6 of 1998

Summary: This Act ([GG 1843](#)) consolidates and amends the laws relating to the sale and supply of liquor. In addition to regulating the licensing process, the Act forbids the sale of drinks that are more than 3% alcohol to persons under 18, prohibits the supply of liquor to employees as remuneration and forbids the consumption of liquor in public places. It was brought into force on 22 December 2001 by GN 250/2001 ([GG 2670](#)).

Repeals: The Act repeals the following laws pertaining to liquor:

- Kaffir Beer (Rural Areas) Control Ordinance 36 of 1957 ([OG 2092](#))
- Chapter V, *Railways and Harbours Control and Management Consolidation Act 70 of 1957* ([SA GG 5908](#))³⁰

³⁰ **Note:** Although the Liquor Act 6 of 1998 ([GG 1843](#)) states that it repeals Chapter V of the *Railways and Harbours Control and Management Consolidation Act 70 of 1957* ([SA GG 5908](#)), research by the authors of Namlex indicates that this Act was not actually in force in Namibia at that stage. Act 70 of 1957 was repealed in South Africa by the *South African Transport Services Act 65 of 1981* ([RSA GG 7786](#)), which was made expressly applicable to SWA (see section 78). (Act 65 of 1981 was subsequently repealed in respect of South West Africa by the National Transport Corporation Act 21 of 1987 ([OG 5439](#)).) Thus, it is our theory that even if the *Railways and Harbours Control and Management Consolidation Act 70 of 1957* had already been transferred to SWA in

- section 22, *General Law Amendment Act 102 of 1967* ([RSA GG 1771](#))
- *Supply and Sale of Liquor to Natives in South West Africa Proclamation* (RSA Proc. R.231/1967, [RSA GG 1846](#), reprinted in [OG 2824](#)), which were regulations issued in terms of section 22(4) and 22(5) of the *General Law Amendment Act 102 of 1967*
- *Supply and sale of liquor to Natives in South West Africa and the Brewing and Supplying of Kaffir Beer in South West Africa* (RSA Proc. 205/1968, [RSA GG 2133](#)),³¹ which were regulations issued in terms of section 22(5) of the *General Law Amendment Act 102 of 1967*
- Liquor Ordinance 2 of 1969 ([OG 2981](#)) (which repealed the Liquor Licensing Proclamation 6 of 1920)
- *Arrangement appertaining to the sale and supply of liquor in Walvis Bay* (RSA Proc. R.21/1984, [RSA GG 9096](#)), which made the *Liquor Act 87 of 1977* and “any regulation made thereunder” applicable in Walvis Bay, rather than the Liquor Ordinance 2 of 1969 of SWA, pursuant to section 38 of the South-West Africa Constitution Act 39 of 1968
- section 5, National Transport Corporation Act 21 of 1987 ([OG 5439](#)) (which was in the interim repealed by the National Transport Services Holding Company Act 28 of 1998 ([GG 1961](#)), with effect from 1 April 1999).

Amendments: The Fourth Schedule of the Act is amended by GN 251/2001 ([GG 2670](#)) and substituted by GN 104/2006 ([GG 3665](#)) which contains requirements for shebeens. Act 5/2009 ([GG 4307](#)) substitutes the expression “Chief Magistrate” for “Chief of Lower Courts” wherever it appears.

The Civil Aviation Act 6 of 2016 ([GG 6047](#)), which was brought into force on 1 November 2016 by GN 260/2016 ([GG 6164](#)), repeals section 80 and amends section 81 (to accord with its repeal of the *Aviation Act 74 of 1962*).

The Child Care and Protection Act 3 of 2015 ([GG 5744](#)), which was brought into force by GN 4/2019 ([GG 6829](#)), substitutes section 56, repeals paragraphs 70(h) and 71(1)(s) and amends section 72.

The Abolition of Payment by Cheque Act 16 of 2022 ([GG 7995](#)), which was brought into force on 15 March 2023 by GN 47/2023 ([GG 8050](#)), amends section 54.

Savings: There is a broad savings clause in section 86 of the Act that would seem to apply to regulations made under any of the laws repealed by the Act, as well as other actions taken under the repealed laws:

Subject to the further provisions of this Act, anything done or deemed to have been done under or in terms of a provision of any law repealed by subsection (1), and which is capable of being done under or in terms of a provision of this Act, shall be deemed to have been done under or in terms of the last-mentioned provision.

Regulations: Liquor Regulations under the current Act are contained in GN 142/2001 ([GG 2575](#)), as amended by GN 105/2006 ([GG 3665](#)) and GN 18/2015 ([GG 5668](#)) (which substitutes Regulation 75). These regulations came into force on the same date as the Act.³²

For the consideration of possible surviving regulations under the repealed laws:

- Kaffir Beer (Rural Areas) Control Ordinance 36 of 1957 ([OG 2092](#)): No regulations have been located
- Chapter V, *Railways and Harbours Control and Management Consolidation Act 70 of 1957* ([SA GG 5908](#)): The Act contains no authorisation for regulations.
- section 22, *General Law Amendment Act 102 of 1967*: Two sets of race-based regulations made

terms of a Transfer Proclamation, the repealing Act would have repealed it in respect of SWA because it was explicitly made applicable to SWA.

³¹ These repealed regulations were amended by RSA Proc. 198/1972 (reprinted in [OG 3275](#)) and by RSA Proc. 240/1973 (reprinted in [OG 3357](#)).

³² The Government Notice which issues these regulations repeals the regulations made under the Liquor Ordinance 2 of 1969 contained in GN 49/1969 ([OG 2984](#)), and all the amendments to those regulations. The regulations in GN 49/1969 in turn repealed the regulations made in terms of the Liquor Licensing Proclamation 6 of 1920 in Government Notices 22/1920, 174/1936, 134/1937 and 375/1952, as amended.

applicable to SWA in terms of that section were repealed by this Act; no others have been located.

- Liquor Ordinance 2 of 1969 ([OG 2981](#)): The regulations issued under this Ordinance were repealed by the regulations made under the current Act.
- *Arrangement appertaining to the sale and supply of liquor in Walvis Bay* (RSA Proc. R.21/1984, [RSA GG 9096](#)), which made any regulation issued in terms of the *Liquor Act 87 of 1977* applicable in Walvis Bay: These regulations have not been researched since they appear to have been superseded by this Act and its regulations which have national application in independent Namibia.
- section 5, National Transport Corporation Act 21 of 1987 ([OG 5439](#)): This section makes reference to regulations authorised by section 52 of Act 21 of 1987 regarding the supply of refreshments and intoxicating liquor by the Corporation in or on its vehicles, trains, aircraft, vessels or premises; however, since section 52 was not repealed by the current Act, the import of these references for the purpose of the savings clause is not clear.

Thus, it appears that no regulations made under any of the repealed laws survive.

Appointments: Members of Regional Liquor Licensing Committees are appointed in GN 20/2002 ([GG 2692](#)), GN 41/2003 ([GG 2933](#)), GN 77/2004 ([GG 3189](#)), GN 178/2004 ([GG 3261](#)), GN 34/2005 ([GG 3410](#)), GN 150/2006 ([GG 3699](#)), GN 153/2007 ([GG 3900](#)), GN 55/2008 ([GG 4005](#)), GN 239/2008 ([GG 4136](#)), GN 35/2009 ([GG 4225](#)), GN 136/2009 ([GG 4278](#)), GN 62/2010 ([GG 4451](#)), GN 238/2010 ([GG 4595](#)), GN 175/2011 ([GG 4792](#)), GN 271/2012 ([GG 5069](#)), GN 182/2013 ([GG 5241](#)), GN 23/2014 ([GG 5425](#)), GN 78/2015 ([GG 5738](#)), GN 112/2018 ([GG 6614](#)) and GN 323/2022 ([GG 7928](#)).

Cases: The following cases pertain to the Liquor Act 6 of 1998 –

S v Teek 2009 (1) NR 127 (SC) (addresses credibility of child evidence in case involving allegations under section 71(s) of Act); see also *S v Teek* 2019 (1) NR 215 (SC) which reinstates trial court's acquittal after discussing credibility of children's evidence and other factors

Orangerivierwinkelders Koöperatief Bpk & Another v Professional Support Service CC & Others 2011 (1) NR 184 (HC) (sections 18-19 discussed at 189B-191B; special costs order denied to respondents who were acting in breach of sections 2 and 49)

S v Shitana & Another 2012 (1) NR 363 (HC) (charge under section 71(1)(n) requires evidence that the liquor sold satisfies the definition of "liquor" in section 1).

The following cases pertain to the Liquor Ordinance 2 of 1969 which was replaced by the Liquor Act 6 of 1998 –

Marais v The Chairman of the Liquor Licensing Board of Namibia 1991 NR 306 (HC)

Swanepoel v Marais & Others 1992 NR 1 (HC)

Weyand v Chairman, Liquor Licensing Board 1993 NR 150 (HC).

Commentary: Legal Assistance Centre, *Alcohol and Youths: Suggestions for Law Reform*, Monograph 4, Legal Assistance Centre, 2009, available [here](#).

Tobacco Products Control Act 1 of 2010

Summary: This Act ([GG 4458](#)) establishes a Tobacco Products Control Committee and a Tobacco Products Control Fund and provides measures to reduce supply and demand in respect of tobacco products, to prohibit the sale of tobacco to persons under 18 and to protect against exposure to tobacco smoke. It is designed to make Namibia compliant with the World Health Organisation Framework Convention on Tobacco Control. The Act was brought into force on 1 April 2014 by GN 34/2014 ([GG 5430](#)).

Regulations: Regulations were published in GN 35/2014 ([GG 5430](#)). Certain of these regulations had

a delayed commencement, in terms of Regulation 17. Regulations 2, 3, 4, 10 and 12 came into force in the case of wholesalers of tobacco products, on a date 12 months from the date of commencement of the Act, and in the case of retailers of tobacco products, on a date 18 months from the date of commencement of the Act. Regulations 5, 6, 7, 8, 9 and 15 came into force on a date three months from the date of commencement of the Act.³³

Related international agreement:

WHO Framework Convention on Tobacco Control (WHO FCTC), 2003.

See also Tobacco Growers Protection Ordinance 2 of 1933 (**AGRICULTURE**).

See also **CRIMINAL LAW AND PROCEDURE**.

See also Ordinance for Prevention and Combating of Alcoholism and Anti-Social Conduct 11 of 1965 (**HEALTH**).

See also Medicines and Related Substances Control Act 13 of 2003 (**MEDICINE**).

³³ Before these regulations were issued, proposed regulations were published in GN 209/2011 ([GG 4831](#)).