

TRANSFER PROCLAMATIONS

During the years 1977 to 1980, the administration of some South African statutes was transferred from South African government departments to the Administrator-General of South West Africa.

Although a few of these transfers were made by Proclamations of the State President of South Africa, most were effected by “Transfer Proclamations” promulgated by the Administrator-General. Each of these Transfer Proclamations applied to all South African statutes administered by a specific South African government department. Exceptions to the general transfer of powers from the department in question were listed in the Transfer Proclamation.

All of the Transfer Proclamations are listed for convenience in the index, in a category entitled “Transfer Proclamations”.

The procedure for effecting transfers

Most of the individual Transfer Proclamations refer to the “General Proclamation”, which is the Executive Powers Transfer (General Provisions) Proclamation, 1977 (AG 7/1977, as amended). This General Proclamation sets forth the mechanics of the transfer of powers.

Section 3(1) of the General Proclamation was the core of the administrative transfer. It stated that any reference to the “Minister”, the “Minister of Finance”, the “State President”, “Parliament” or the “Government of the Republic” should be construed as a reference to the Administrator-General, while a reference to the “State” should be construed as *including* a reference to the Administrator-General. A reference to the “Republic” was to be construed as a reference to the territory of South West Africa, and a reference to the “*Government Gazette*” of the Republic was to be construed as a reference to the “*Official Gazette*” of the territory of South West Africa.

If a statute was completely exempted from the operation of section 3(1) of the General Proclamation, then the administration of the statute was not transferred to South West Africa.

Transfer proclamations which did not actually refer to the General Proclamation followed a similar pattern.

The effect of transfer proclamations on amendments and repeals

If the administration of a statute was transferred to South West Africa by the General Proclamation, section 3(5) of the General Proclamation (as inserted by AG 10/1978 and amended by AG 20/1982) had the effect of “freezing” the statute as it stood at the date of transfer.

Section 3(5) as amended states:

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.

The effect was that blanket provisions predating the transfer -- such as the frequently-used formula "This Act, and any amendment thereof, shall also apply in the territory of South West Africa" -- no longer operated to make South African amendments to the Act automatically applicable to South West Africa. Amendments to the statute in South Africa subsequent to the date of the relevant transfer proclamation were applicable to South West Africa *only* if the amending act, or some other law passed subsequent to the date of transfer, expressly made the amendments applicable to South West Africa.

The same rule applied to repeals. If a statute which had been transferred to South West Africa was repealed in South Africa, the repeal was not applicable to South West Africa unless the repealing act expressly stated that it also applied to South West Africa.

The effect of transfer proclamations on rules and regulations

The same principle applied to rules and regulations issued under a statute which had been transferred to South West Africa.

Section 3(4) of the General Proclamation states:

Any proclamation, regulation or rule which is issued or made after the commencement of any transfer proclamation by, or on the authority or with the approval of, the State President or the 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) [the section which interpreted terminology in the relevant laws so as to effect the transfer] shall apply.

The effect was that rules and regulations issued under South African laws applicable to South West Africa after the date of transfer did not apply to South West Africa unless this was explicitly stated. If subsequent rules and regulations were made applicable to South West Africa through this procedure, then their administration was transferred to South West Africa in the same way as that of the enabling act.

Additional information

Transfers are currently relevant only where statutes which originated in South Africa are still applicable in independent Namibia. Transfers of individual statutes are discussed in more detail under the NAMLEX entry for each such statute.