



Republic of Namibia
Annotated Statutes

Foodstuffs, Cosmetics and Disinfectants Ordinance 18 of 1979

(OG 4011)

came into force on date of publication: 27 August 1979; brought into force in any part of South West Africa where it was not already in force by the Health Act 21 of 1988 (OG 5651), with effect from that Act's date of publication: 30 December 1988

ORDINANCE

To control the sale, manufacture and importation of foodstuffs, cosmetics and disinfectants; and to provide for incidental matters.

*(Assented to 20 August 1979)
(English text signed by the Administrator-General)
(Date of commencement 27 August 1979)*

[The statements in italics appear above the Ordinance heading and long title in the *Official Gazette* publishing this Act, but have been moved to their usual position here for consistency with other statutes.]

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BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the Administrator-General, in so far as such consent is necessary, previously obtained and communicated to the Assembly by the Chairman of the Assembly, as follows:-

Definitions

- I. In this Ordinance, unless the context otherwise indicates -

“Administration” means the Administration of the Territory;

“advertisement” in relation to any foodstuff, cosmetic or disinfectant, means any written, pictorial, visual or other descriptive matter or verbal statement, communication, representation or reference -

- (a) appearing in a newspaper or other publication; or
- (b) distributed to members of the public; or
- (c) brought to the notice of members of the public in any manner,

and which is intended to promote the sale or encourage the use of such foodstuff, cosmetic or disinfectant; and “advertise” has a corresponding meaning;

“analyst” means a person designated and authorised as such under section 12;

“appliance” means the whole or any part of any implement, machine, instrument, apparatus or other object used or capable of being used for, in or in connection with the manufacture, treatment, packing, labelling, storage, conveyance, preparation, serving or administering of any foodstuff, cosmetic or disinfectant;

“cosmetic” means any article or substance (except a medicine as defined in the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965)) intended to be rubbed, poured, sprinkled or sprayed on or otherwise applied to the human body for purposes of cleansing, beautifying, promoting attractiveness or improving or altering the appearance, and includes any part or ingredient of any such article or substance;

[The Medicines and Related Substances Control Act 101 of 1965 has been replaced by the Medicines and Related Substances Control Act 13 of 2003.]

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“Director” means the Director of Health Services of the Administration;

“described” includes advertise or label;

“disinfectant” means any article or substance used or applied or intended to be used or applied as a germicide, preservative or antiseptic, or as a deodorant or cleansing material which is not a cosmetic;

“Executive Committee” means the Executive Committee constituted under section 4 of the South-West Africa Constitution Act, 1968 (Act 39 of 1968);

[The South-West Africa Constitution Act 39 of 1968 was repealed by Article 147 of the Namibian Constitution.]

“foodstuff” means any article or substance (except a medicine as defined in the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965)) ordinarily eaten or drunk by man, or purporting to be suitable, or manufactured or sold, for human consumption, and includes any part or ingredient of any such article or substance, or any substance used or intended or destined to be used as a part or ingredient of any such article or substance;

[The Medicines and Related Substances Control Act 101 of 1965 has been replaced by the Medicines and Related Substances Control Act 13 of 2003.]

“health officer” a medical practitioner or health inspector employed by the Administration;

“import” means to import into the Territory by any means; and “importation” has a corresponding meaning;

“importer” includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of or in any way entitled to the custody or control of any imported foodstuff, cosmetic or disinfectant;

“import harbour” means a place in the Territory appointed or prescribed in terms of section 6 of the Customs and Excise Act, 1964 (Act 91 of 1964), as a place of entry for the Republic of South Africa or as a customs and excise airport, through which goods may be imported into the said Republic or landed for transit or coastwise carriage;

[The Customs and Excise Act 91 of 1964 has been replaced by the Customs and Excise Act 20 of 1998.]

“inspector” means a person designated as such under section 10;

“label” means any mark or any written, pictorial or other descriptive matter appearing on or attached to or packed with any foodstuff, cosmetic or disinfectant or its package, and which refers to such foodstuff, cosmetic or disinfectant; and, when used as a verb, means to furnish with a mark or to attach, or to furnish in any other manner with, any written, pictorial or other descriptive matter;

“local authority” means the same as in sections 7 and 9 of the Public Health Act, 1919 (Act 36 of 1919) as applied to the Territory by the Public Health Proclamation, 1920 (Proclamation 36 of 1920);

[The Public Health Act 36 of 1919 and Proclamation 36 of 1920 were both repealed by the Public and Environmental Health Act 1 of 2015.]

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“manufacture” includes production, or preparation, processing, preservation or other manufacturing process; and “manufacture” when used as a verb, has a corresponding meaning;

“package” means anything by or in which any foodstuff, cosmetic or disinfectant is covered, enclosed, contained or packed;

“premises” means land or any building or other structure and includes any train, boat, ship, aircraft or other vehicle;

“prohibited”, except in the definition of “prohibited article”, means prohibited in terms of any regulation;

“prohibited article” means any foodstuff, cosmetic or disinfectant which may in terms of this Ordinance not be sold or manufactured or imported for sale or which does not comply with the provisions of this Ordinance in all respects;

“regulation” means a regulation made and in force under this Ordinance;

“sealed package” means an unopened package which cannot be opened without breaking or damaging such package or any seal, adhesive label or other part of or attachment to such package;

“Secretary” means the Secretary for South West Africa;

“sell” includes to offer, advertise, keep, display, transmit, consign, convey or deliver for sale, or to exchange, or to dispose of to any person in any manner whether for a consideration or otherwise; and “sold”, “selling” and “sale” have corresponding meanings;

“this Ordinance” includes the regulations made and in force thereunder;

“Territory” means the Territory of South West Africa;

“treated” means coloured, stained, powdered, polished, coated or steamed, or mixed, preserved, flavoured, diluted or thickened with any substance, or treated in any other manner; and “treat” and “treatment” have corresponding meanings;

“warranty” means a warranty as contemplated in sections 6 and 7.

Prohibition of sale, manufacture or importation of certain articles

2. (1) Subject to the provisions of subsection (2) and section 6, any person shall be guilty of an offence -

- (a) if he sells, or manufactures or imports for sale, any foodstuff, cosmetic or disinfectant -
 - (i) which contains or has been treated with a prohibited substance; or
 - (ii) which contains a particular substance in a greater measure than that permitted by regulation or has been treated with a substance containing a particular substance in a greater measure than that permitted by regulation; or
 - (iii) which does not comply with any standard of composition, strength, purity or quality prescribed by regulation for or in respect of such foodstuff, cosmetic

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or disinfectant, or any standard so prescribed for or in respect of any other attribute thereof; or

- (iv) the sale of which is prohibited by regulation; or
- (b) if he sells, or manufactures or imports for sale, any foodstuff or cosmetic -
 - (i) which is contaminated, impure or decayed, or harmful or injurious to human health or deemed to be such in terms of any regulation; or
 - (ii) which contains or has been treated with a contaminated, impure or decayed substance, or a substance which is harmful or injurious to human health or deemed to be such in terms of any regulation; or
- (c) if he sells, or manufactures or imports for sale, any foodstuff -
 - (i) which contains or has been treated with a substance not present in such foodstuff when it is in a normal, pure and sound condition; or
 - (ii) to which any substance has been added so as to increase the mass or volume of such foodstuff with the object to deceive; or
 - (iii) from which any substance or ingredient has been abstracted, removed or omitted with the result that its nutritive value or other properties, in comparison with those of such foodstuff in a normal, pure and sound condition, are diminished or otherwise detrimentally affected; or
 - (iv) which has been treated in such manner that its damaged or unsound condition or inferior quality is concealed whether entirely or partly; or
- (d) if he treats any foodstuff, cosmetic or disinfectant with a prohibited substance or in any other manner, or interferes therewith, so that the said foodstuff, cosmetic or disinfectant is affected in any manner that is likely to be injurious to the health of any person who eats or drinks such foodstuff, or who uses or comes into contact with such cosmetic or disinfectant.

(2) The provisions of subsection (1)(c) shall not apply with reference to the sale, manufacture or importation of a foodstuff -

- (a) which contains, or has been treated with, a substance which is not harmful or injurious to human health and the addition or presence of which is necessary for the manufacture of such foodstuff as an article of commerce in a fit condition or form to be packed, stored, conveyed, used or consumed, and is not intended to deceive or mislead any buyer by increasing the mass or volume or concealing or lowering the quality of such foodstuff; or
- (b) which contains, but in no greater measure than that permitted by regulation (if any), a foreign substance which is unavoidably present in such foodstuff as a result of the process of its collection or manufacture; or
- (c) from which a substance has been abstracted or removed, if such abstraction or removal is necessary for the manufacture of such foodstuff as an article of commerce in a fit condition or form to be packed, stored, conveyed, used or consumed, or has been effected in accordance with the provisions of the regulations.

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(3) For the purposes of subsection (1), “manufactures” includes to treat any foodstuff, cosmetic or disinfectant in a manner which, or with a substance the presence of which, renders such foodstuff, cosmetic or disinfectant a prohibited article in terms of that subsection, and to add any substance to, or abstract, remove or omit any substance or ingredient from, any foodstuff, cosmetic or disinfectant with the result that such foodstuff, cosmetic or disinfectant becomes a prohibited article in terms of that subsection.

Sale of mixed, compounded or blended foodstuff

3. (1) Subject to the provisions of subsection (2) and section 6, any person shall be guilty of an offence if he sells any foodstuff which is a mixture or compound of different foodstuffs or a blend consisting exclusively of different kinds or grades of the same foodstuff, otherwise than in a package bearing a label which complies with the provisions of the regulations (if any) and which indicates clearly that the foodstuff sold is such a mixture, compound or blend and specifies the names or, as the case may be, the kinds or grades of the ingredients and the proportions or amounts in which they are present, unless such foodstuff is taken and delivered direct to the purchaser from bulk stock which, or the container of which, bears such a label.

[The word “guilty” is misspelt in the *Official Gazette*, as reproduced above.]

(2) The provisions of subsection (1) shall not apply with reference to the sale of any foodstuff -

- (a) which is the subject of a patent under the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), is sold in a condition complying with the specifications of such patent, and has been provided with a label specifying the number under which such patent is registered in terms of that Proclamation; or

[The Patents and Designs Proclamation 17 of 1923 has been replaced by the Industrial Property Act 1 of 2012.]

- (b) which is exempted from those provisions by regulation or under section 24.

Use or employment of prohibited process, method, appliance, container or object

4. Subject to the provisions of section 6, any person shall be guilty of an offence if he -

[The word “guilty” is misspelt in the *Official Gazette*, as reproduced above.]

- (a) employs or uses a prohibited process or method or a prohibited appliance or container or other prohibited object in or in connection with the manufacture, treatment, packing, labelling, storage or conveyance of any foodstuff, cosmetic or disinfectant; or
- (b) uses a prohibited appliance or container or other prohibited object in or in connection with the preparation, serving or administering of any foodstuff or cosmetic in the course or as part of any trade or business; or
- (c) sells or imports for sale any foodstuff, cosmetic or disinfectant in or in connection with the manufacture, treatment, packing, labelling, storage or conveyance of which a prohibited process or method or a prohibited appliance or container or any other prohibited object has been employed or used.

False description of articles

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5. (1) Subject to the provisions of subsection (2) and section 6, any person shall be guilty of an offence if he -

- (a) publishes a false or misleading advertisement of any foodstuff, cosmetic or disinfectant; or
- (b) for purposes of sale, describes any foodstuff, cosmetic or disinfectant in a manner which is false or misleading as regards its origin, nature, substance, composition, quality, strength, nutritive value or other properties or the time, mode or place of its manufacture; or
- (c) sells, or imports for sale, any foodstuff, cosmetic or disinfectant described in a manner referred to in paragraph (b).

(2) The provisions of subsection (1) shall not be deemed to prohibit the description of any foodstuff by, or its sale or importation under, a geographical name which is generally accepted as a generic term for a particular type or variety of such foodstuff, provided that foodstuff described by or sold or imported under the name in question is of the type or variety indicated by that name.

Special defences

6. No person shall be convicted -

- (a) when he is charged with selling, manufacturing or importing or otherwise dealing with any foodstuff or cosmetic in contravention of any provision of this Ordinance, if he proves that he believed, or had reason to believe, that the foodstuff or cosmetic to which the charge relates was not sold for human consumption or use, or manufactured, imported or otherwise dealt with for sale for human consumption or use, as the case may be;
- (b) when he is charged with selling or importing any foodstuff, cosmetic or disinfectant in contravention of any provision of this Ordinance, if he proves -
 - (i) that he or his employer or principal acquired or imported the article in question under a written warranty complying with the provisions of section 7 and furnished to him or to his employer or principal; and
 - (ii) that he at no relevant time had reason to suspect that the article in question was a prohibited article; and
 - (iii) in the case of the sale of the article in question, that he sold it in the condition in which he acquired or imported it or, if it was acquired or imported by his employer or principal, that he at no relevant time had reason to suspect that it was at the time of the sale in a different condition from that in which it was when so acquired or imported;
- (c) when he is charged with publishing a false or misleading advertisement of a foodstuff, cosmetic or disinfectant, if he proves that he does not sell the foodstuff, cosmetic or disinfectant to which the advertisement in question relates and that he did not know, and could not reasonably be expected to have known, that the said advertisement was in any respect false or misleading, unless it is proved that the accused failed, on demand by an inspector or a member of the South African

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Police, to furnish the name and address of the person at whose instance that advertisement was published;

- (d) when he is charged with selling any foodstuff, cosmetic or disinfectant which he did not manufacture, import, pack or treat in any manner, if he proves that he did not know or could not have known of the presence in such foodstuff, cosmetic or disinfectant, at the time of such sale, of any prohibited substance, or any contamination, pollution or similar flaw, and that he took every reasonable precaution to prevent the contamination, pollution or decay of such foodstuff, cosmetic or disinfectant.

Warranties

7. (1) A warranty referred to in section 6 -

- (a) shall not be valid unless furnished by a person resident in the Territory, and, if it is furnished on behalf of a third person, unless such third person is also resident or, in the case of a company, has its registered office in the Territory;
- (b) shall reflect the name and address of the person by whom it is furnished and, if it is furnished on behalf of a third person, the name and address of such third person, or, in the case of a company, the name of such company and the address of the registered office thereof;
- (c) shall guarantee that any foodstuff, cosmetic or disinfectant to which it applies, is not a prohibited article in terms of this Ordinance and complies in all respects with the provisions of this Ordinance; and
- (d) shall contain particulars by which any article to which it applies can be identified, including the mass and size of any such article or its container and the number of such articles or containers.

(2) Any person who furnishes a warranty which is false or misleading in any respect, shall be guilty of an offence.

(3) Any court within whose area of jurisdiction the place is situated where a warranty has been furnished (including any address reflected on such warranty for the purposes of subsection (1)(b)), or where any article to which such warranty applies is sold, or where a sample of such article is obtained in terms of this Ordinance, shall have jurisdiction in respect of any offence committed in respect of such warranty.

Liability of employer or principal

8. (1) An act or omission of an employee, manager or agent which constitutes an offence under this Ordinance shall be deemed to be the act or omission of his employer or principal and the said employer or principal may be convicted and sentenced in respect thereof unless he proves -

- (a) that he did not permit or connive at such act or omission; and
- (b) (i) that he took all reasonable measures to prevent an act or omission of the nature in question; or
- (ii) that no act or omission of the nature in question (whether such act was legal or illegal) did under any circumstances fall within the course of the

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employment or the scope of the authority of the employee, manager or agent concerned.

(2) For the purposes of subsection (1)(b)(i) the fact that an employer or principal forbade an act or omission of the nature in question shall not in itself be regarded as sufficient proof that he took all reasonable measures to prevent such an act or omission.

[The word "omission" is misspelt in the *Official Gazette*, as reproduced above.]

(3) The provisions of subsection (1) shall not be deemed to relieve the employee, manager or agent concerned from liability to be convicted and sentenced in respect of the act or omission in question.

Liability of importer, manufacturer or packer

9. (1) The person who, according to the label of any foodstuff, cosmetic or disinfectant which is sold in a sealed package and which does not comply with the provisions of this Ordinance, imported, manufactured or packed the article in question, shall be presumed to have imported, manufactured or packed, as the case may be, such article and may be convicted and sentenced accordingly unless he proves -

- (a) that he did not import, manufacture or pack such article; or
- (b) that the non-compliance of such article with the provisions of this Ordinance is due to decay or some other change which occurred after such article left his possession, and over which he had no control.

(2) The provisions of subsection (1) shall not be deemed to relieve any person from liability incurred by him in terms of this Ordinance in respect of the sale of any article referred to in that subsection.

Inspectors

10. (1) The Secretary may for the purposes of this Ordinance designate health officers as inspectors who shall, subject to his control, exercise or perform the powers, duties and functions conferred or imposed on inspectors under this Ordinance.

(2) Each inspector designated under subsection (1) shall be provided with a letter of authority signed by the Secretary and certifying that such person has been authorised as an inspector in terms of this Ordinance.

(3) The powers, duties and functions of an inspector in terms of this Ordinance may also be exercised or performed -

- (a) in respect of any foodstuff, cosmetic or disinfectant referred to in section 14, by an officer of the Department of Customs and Excise who has been authorised thereto in writing, either in general or in a particular case by the Secretary for Customs and Excise, after consultation with the Secretary;
- (b) for the purposes of the administration of any provision of this Ordinance by a local authority under section 23, by any person employed by such local authority as a health inspector and authorised thereto in writing by such local authority;
- (c) by any member of the South African Police of or above the rank of sergeant;

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- (d) by any member of the South African Police below the rank of sergeant authorised thereto in writing by a member referred to in paragraph (c).

Powers, duties and functions of inspectors

11. (1) An inspector may at all reasonable times enter upon any premises on or in which any foodstuff, cosmetic or disinfectant is or is suspected to be manufactured, treated, graded, packed, marked, labelled, kept, stored, conveyed, sold, served or administered or on or in which any other operation or activity with or in connection with any foodstuff, cosmetic or disinfectant is or is suspected to be carried out, and may, subject to the provisions of this Ordinance -

- (a) inspect or search such premises, or examine, or extract, take and remove samples of, any foodstuff, cosmetic or disinfectant found in or upon such premises, or any appliance, product, material, object or substance so found which is or is suspected to be used, or to be destined or intended for use, for, in or in connection with the manufacture, treatment, grading, packing, marking, labelling, storage, conveyance, serving or administering of any foodstuff, cosmetic or disinfectant, or for, in or in connection with any other operation or activity with or in connection with any foodstuff, cosmetic or disinfectant, or open any package or container of such foodstuff, cosmetic, disinfectant, product, material, object or substance;
- (b) demand information regarding any such foodstuff, cosmetic, disinfectant, appliance, product, material, object or substance from any person in whose possession or charge it is or from the owner or person in charge of such premises;
- (c) weigh, count, measure, mark or seal any such foodstuff, cosmetic, disinfectant, appliance, product, material, object or substance or its package or container, or lock, secure, seal or close any door or opening giving access to it;
- (d) (i) examine or make copies of, or take extracts from, any book, statement or other document found in or upon such premises and which refers, or is suspected to refer, to such foodstuff, cosmetic, disinfectant, appliance, product, material, object or substance;
- (ii) demand from the owner or any person in charge of such premises or from any person in whose possession or charge such book, statement or other document is, an explanation of any entry in it;
- (e) (i) inspect any operation or process carried out in or upon such premises in connection with any activity referred to in paragraph (a);
- (ii) demand information regarding such operation or process from the owner or person in charge of such premises or from any person carrying out, or in charge of carrying out, such operation or process;
- (f) seize any foodstuff, cosmetic, disinfectant, appliance, product, material, object, substance, book, statement or document which appears to provide proof of a contravention of any provision of this Ordinance.

(2) An inspector referred to in section 10(1) or (3)(a), (b) or (d) shall produce the written authority by virtue of which he is authorised as an inspector to any person affected by the exercise or performance of any power, duty or function of such inspector under this Ordinance.

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(3) The procedure to be followed by an inspector in obtaining, transmitting for analysis or examination or otherwise dealing with any sample, shall be as prescribed by regulation.

Analysts

12. (1) The Secretary may in writing designate and authorise officers or employees in the service of the Administration or the other persons that he may deem suitable, as analysts to analyse or examine samples of any article or substance for the purposes of this Ordinance.

(2) An analyst shall for the purpose of analysing or examining any such sample, or a report on the result, employ or use such methods or forms, or complete such certificates or reports as may be prescribed by regulation, and shall exercise such other powers and perform such duties or functions as may be so prescribed.

(3) Until such time as the Secretary has under subsection (1) designated and authorised any person as analyst, every analyst properly authorised in terms of the provisions of the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972) of the Republic of South Africa, shall be deemed to be authorised to analyse or examine samples of any article or substances for the purposes of this Ordinance.

Further analysis or examination of sample

13. (1) If evidence of an analysis or examination of a sample by an analyst is adduced in a prosecution under this Ordinance, the court, on its own motion or at the request of the prosecutor or, subject to the provisions of subsection (3), at the request of the accused, may order a further analysis or examination of the remaining portion of the sample used for the first analysis or examination or, if there is no such remaining portion and the inspector who obtained the sample has retained any part of it in accordance with the regulations, of the part so retained by him.

(2) Such further analysis or examination shall be carried out by an analyst designated by the court or, if an analyst is not readily available, by any competent person so designated.

- (3) (a) A request by the accused for such a further analysis or examination shall be granted only on condition that he deposits the sum of twenty-five rand with the court.
- (b) Such deposit shall be returned to the accused if he is acquitted on the charge to which the evidence relates, but if he is convicted the court may declare such deposit or such part of it as the court may consider sufficient to defray the cost of the further analysis or examination, to be forfeited to the Administration.

[The word "examination" is misspelt in the *Official Gazette*, in both paragraphs (a) and (b), as reproduced above. The word "the" should be "he" in paragraph (b) in the phrase "if the is acquitted".]

Detention of imported articles

14. (1) If an inspector has taken a sample for analysis or examination of any foodstuff, cosmetic or disinfectant imported at an import harbour -

- (a) such foodstuff, cosmetic or disinfectant and all similar articles in the same consignment shall, subject to the provisions of paragraph (b), be detained in the import harbour in the custody of the Department of Customs and Excise until the analysis or examination has been completed;

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- (b) such foodstuff, cosmetic or disinfectant and the said similar articles may, with the approval of the Director, be removed from the import harbour if the owner, importer or consignee furnishes a guarantee approved by the Director, that he will not pledge, sell or in any manner alienate or part with, or grant any right in or over, the articles in question until the analysis or examination has been completed, and that, if as a result of the analysis or examination it should appear that such articles may in terms of this Ordinance, not be imported, he will immediately return the whole consignment of such articles to the import harbour or to the port of shipment or place of origin, as the Director may direct, or deal with it in such other manner as the Director may direct.

[The word “consignment” is misspelt in the *Official Gazette*, as reproduced above.]

(2) If as a result of the analysis or examination of a sample of a foodstuff, cosmetic or disinfectant referred to in subsection (1), it appears that the article in question may in terms of this Ordinance not be imported, the Director at his discretion may by order in writing direct that such article and all similar articles in the same consignment -

- (a) shall be confiscated and destroyed; or
- (b) shall be returned to the import harbour or to the port of shipment or place of origin; or
- (c) may be imported on compliance by the owner, importer or consignee with such conditions as the Director may specify in such order, including any condition requiring the substitution of a label approved by the Director for any existing label; or
- (d) shall be dealt with or disposed of in such other manner as the Director may specify in such order.

Regulations

15. (1) The Executive Committee may make regulations -
- (a) prescribing the nature and composition of any foodstuff, cosmetic or disinfectant, or standards for the composition, strength, purity or quality or any other attribute of such foodstuff, cosmetic or disinfectant, or of any ingredient or part of a foodstuff, cosmetic or disinfectant;
- (b) prescribing, prohibiting, restricting or otherwise regulating -
- (i) the use or employment of any substance or any appliance, container or other object or any process or method for, in or in connection with the manufacture, treatment, packing, labelling, storage, conveyance, serving or administering of any foodstuff, cosmetic or disinfectant; or
- (ii) the abstraction or removal of any substance from any foodstuff;
- (c) prescribing the circumstances under which or the manner in which the fact that a particular substance, process or method has been used or employed for, in or in connection with the manufacture or treatment of any foodstuff, cosmetic or disinfectant or the fact that any substance has been abstracted or removed from any foodstuff, shall be revealed to a buyer of the article in question;

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- (d) prescribing any foreign substance, or the nature of foreign substances, that may be considered as unavoidably present in any foodstuff or cosmetic as a result of the process of its collection, manufacture or treatment, or the greatest measure in which any such substance or substances of such nature may be present in any foodstuff or cosmetic;
- (e) prescribing which foodstuffs, cosmetics or substances shall for the purposes of this Ordinance be deemed to be harmful or injurious to human health;
- (f) declaring any foodstuff to be a perishable foodstuff for the purposes of this Ordinance;

[The word “Ordinance” is misspelt in the *Official Gazette*, as reproduced above.]

- (g) prohibiting the sale of any particular foodstuff, cosmetic or disinfectant, or of any foodstuff, cosmetic or disinfectant of a particular nature or class;
- (h) prescribing the name under which any particular foodstuff, cosmetic or disinfectant may be sold, or prohibiting the sale of any particular foodstuff, cosmetic or disinfectant under a name other than a name so prescribed or under a specified name;
- (i) prohibiting, restricting or otherwise regulating the manufacture, importation, possession, sale or use of any appliance, container or other object -

[The word “possession” is misspelt in the *Official Gazette*, as reproduced above.]

- (i) which is or can be used, or is intended or destined for use, in or in connection with the manufacture, treatment, packing, labelling, storage, conveyance, serving or administering of any foodstuff or cosmetic and which is in such a condition, or which consists of or contains or has been treated with any substance of such nature, that if it should come into contact with any foodstuff or cosmetic, such foodstuff or cosmetic would thereby become or is likely thereby to become harmful or injurious to human health; or
 - (ii) which is or can be used or employed, or is intended or destined for use or employment in or in connection with a prohibited process or method of manufacture, treatment, packing, labelling, storage or conveyance of any foodstuff, cosmetic or disinfectant;
- (j) prescribing, prohibiting, restricting or otherwise regulating -
 - (i) the packing of any foodstuff, cosmetic or disinfectant or the packing of any such article in a specified manner or in a manner other than a specified manner; or
 - (ii) the use for the packing of any such article of a package of a specified condition, form or nature or made from or treated with any specified material or substance;
 - (k) prescribing the manner in which any foodstuff, cosmetic or disinfectant or its package, or the bulk stock from which it is taken for sale, shall be labelled, the nature of the information to be reflected on any label, the manner or form in which

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such information shall be so reflected or shall be arranged on the label, or the nature of information which shall not be reflected on any label;

- (l) exempting any foodstuff, cosmetic or disinfectant specified or of a specified nature or class, from the provisions of this Ordinance relating to labelling, and prescribing the conditions or prerequisites (if any) in connection with any such exemption;
- (m) prescribing the powers or duties to be exercised or performed by an inspector, including powers or duties in connection with obtaining or transmitting samples for analysis or examination, or otherwise dealing with samples for the purposes of this Ordinance;
- (n) prescribing the powers or duties to be exercised or performed by an analyst, methods of analysis or examination of samples for the purposes of this Ordinance, the form of any certificate or report to be furnished in connection with such analysis or examination, or the nature or arrangement of particulars to be reflected in such a certificate or report;
- (o) with regard to any matter which in terms of this Ordinance may be prescribed or otherwise dealt with by regulation,

and, in general, with regard to any matter which the Executive Committee considers necessary or expedient to prescribe or regulate in order to attain or further the objects of this Ordinance, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(2) No regulation shall be made under subsection (1)(h) which has the effect of prohibiting the sale of any foodstuff, cosmetic or disinfectant under a trade mark or trade name under which it is sold at the date of the coming into operation of this Ordinance, save in such cases where the Executive Committee is convinced that the trade mark or trade name falsely or misleadingly describes the foodstuff, cosmetic or disinfectant.

(3) Regulations made under subsection (1)(n) may for the analysis or examination of a sample prescribe any method set out in any publication which in the opinion of the Executive Committee is generally recognised as authoritative.

(4) Any regulation may provide that it shall be applicable only in the area specified therein.

(5) The regulations may prescribe penalties not exceeding the penalties prescribed by section 18 for any contravention of or failure to comply with the provisions of such regulations.

Preservation of secrecy

16. (1) No person shall, except for the purpose of carrying out his functions or the performance of his duties under this Ordinance or for the purpose of legal proceedings under this Ordinance or when required to do so by any court or under any law -

- (a) without the authority in writing of the Director, disclose to any other person the contents of any certificate or report on the analysis or examination of a sample in terms of this Ordinance; or
- (b) disclose to any other person any information acquired by him in the carrying out of his functions or the performance of his duties under this Ordinance and relating to the business or affairs of any other person.

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(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

Offences

17. Any person who -

- (a) obstructs or hinders an inspector in the performance of his functions or duties or the exercise of his powers under this Ordinance; or
- (b) when an inspector demands of him an explanation or particulars or information relating to a matter within his knowledge, refuses or fails to give such explanation, particulars or information or gives an explanation, particulars or information which is false or misleading, knowing it to be false or misleading; or
- (c) otherwise than in the exercise or performance of a power, duty or function under this Ordinance, removes, obliterates, alters, damages, breaks or opens a mark, seal or fastening placed by an inspector on any foodstuff, cosmetic or disinfectant or its package or container or on or over any door or opening giving access to it; or
- (d) falsely holds himself out to be an inspector; or
- (e) takes back any sample or other article obtained or seized under this Ordinance, or prevents or obstructs the obtaining or seizure of any such sample or other article; or
- (f) falsely makes use of any warranty, certificate, report, invoice or other document in connection with any foodstuff, cosmetic or disinfectant; or
- (g) for purposes of business or trade makes use of any report or certificate furnished in terms of this Ordinance by an inspector or analyst,

shall be guilty of an offence.

Penalties

18. (1) Any person convicted of an offence under this Ordinance shall, subject to the provisions of subsection (2), be liable -

- (a) on a first conviction, to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;
- (b) on a second conviction, to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
- (c) on a third or subsequent conviction, to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Where a penalty is specifically prescribed by regulation for a contravention of or failure to comply with any regulation, any person convicted of any such contravention or failure shall be liable only to the penalty so prescribed.

Jurisdiction

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19. A magistrate's court shall have jurisdiction to impose any penalty provided for by this Ordinance.

Forfeiture

20. (1) The court convicting any person of an offence under this Ordinance may declare any foodstuff, cosmetic, disinfectant, appliance, product, material, substance or other object in respect of which the offence was committed or which was used for, in or in connection with the commission of the offence, to be forfeited to the Administration.

(2) Anything forfeited under subsection (1) shall be destroyed or otherwise dealt with as the Director may direct.

Time limits and other requirements in connection with prosecution

21. (1) (a) Subject to the provisions of paragraph (b), no prosecution for a contravention of a provision of this Ordinance disclosed by the analysis or examination of a sample shall be instituted after ninety days, or in the case of a sample of a foodstuff declared by regulation to be a perishable foodstuff after sixty days from the date on which the sample was obtained for the purpose of such analysis or examination.

[The word "after" is misspelt in the *Official Gazette*, as reproduced above.]

(b) The provisions of paragraph (a) shall not apply to proceedings against any person who furnished a warranty in respect of the article of which the sample in question was obtained.

(2) A copy of any certificate or report furnished by an analyst on the analysis or examination of a sample and which the prosecutor intends to produce as evidence in any prosecution under this Ordinance shall be served on the accused with the summons.

(3) If the accused has within three days after having been served as aforesaid with a copy of a certificate or report, demanded in writing that the analyst who furnished the certificate or report shall be called as a witness at the trial, and has paid or tendered to the prosecutor a sum of money sufficient to defray the expenses incidental to the calling and attendance of the said analyst as a witness, and if the prosecutor produces the certificate or report as evidence at the trial, the prosecutor shall call the said analyst as a witness at such trial.

(4) The accused may, instead of requiring that the said analyst be called as a witness, submit to him written interrogatories approved by the court, and such interrogatories and any reply thereto, purporting to be a reply from the said analyst, shall be admissible as evidence in the proceedings.

Proof of facts, and presumptions

22. In any prosecution under this Ordinance -

(a) a copy of or extract from a book, statement or other document, made by an inspector under section 11(1)(d) and certified by him to be true and correct, shall unless the contrary is proved, be presumed to be a true and correct copy of or extract from the relevant book, statement or other document, and shall on its production in court be *prima facie* proof of any entry to which it relates;

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- (b) a certificate or report on the analysis or examination of a sample and purporting to be signed by an analyst shall on its production in court be *prima facie* proof of the facts stated in it;
- (c) a quantity of a foodstuff, cosmetic or disinfectant in or upon any premises at the time a sample of it is obtained by an inspector for the purposes of this Ordinance, shall, unless the contrary is proved, be presumed to be in the same condition or possess the same properties as such sample;
- (d) a sample of a foodstuff, cosmetic or disinfectant obtained by an inspector for analysis or examination in terms of this Ordinance, shall be presumed to have been sold to him by the person selling the foodstuff, cosmetic or disinfectant of which it is a sample;
- (e) if it is proved that any person has manufactured, treated or imported any foodstuff, cosmetic or disinfectant, it shall be presumed, unless the contrary is proved, that he manufactured, treated or imported the article in question for purposes of sale;
- (f) any appliance, product, material, substance or other object found in or upon any premises where any foodstuff, cosmetic or disinfectant is manufactured, treated, packed, labelled, stored or conveyed or where any foodstuff or cosmetic is served or administered, shall, unless the contrary is proved, be presumed to be used for, in or in connection with the manufacture, treatment, packing, labelling, storage or conveyance of such foodstuff, cosmetic or disinfectant or the serving or administering of such foodstuff or cosmetic, as the case may be;
- (g) any person who sells, manufactures or imports any foodstuff, cosmetic or disinfectant which contains any other foodstuff, cosmetic or disinfectant or in or on which any other foodstuff, cosmetic or disinfectant is present, shall be presumed to sell, manufacture or import, as the case may be, such other foodstuff, cosmetic or disinfectant.

Administration of Ordinance by authorised local authority

23. (1) The Executive Committee may by notice in the *Official Gazette* authorise any local authority to enforce within its area of jurisdiction and through its duly authorised officers, such provisions of this Ordinance as the Executive Committee may specify in the notice.

(2) The Executive Committee may restrict the authorisation referred to in subsection (1) to such articles or classes of articles as it may specify in the notice, and may grant the authority subject to such further restrictions or the conditions it may so specify.

(3) The Executive Committee may by notice in the *Official Gazette* withdraw or amend any notice published under subsection (1).

(4) The Secretary may at his discretion grant permission in writing to any local authority (which has been authorised as contemplated in subsection (1)) to transmit to any analyst for analysis or examination at the Administration's expense such number of samples as the Secretary may specify, and may at any time amend or withdraw such permission.

Exemptions

24. Notwithstanding anything to the contrary in this Ordinance the Executive Committee may in general or in a specific case or in cases of a specific nature, if it is of the opinion that

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there is a real need therefor and that it will in no way be harmful or injurious to human health, grant exemption on the conditions it may determine from any or certain provisions or requirements of this Ordinance in respect of any foodstuff, cosmetic or disinfectant.

Defect in form not to invalidate

25. A defect in the form of a notice, order, certificate, report or other document issued, made or furnished in terms of this Ordinance shall not invalidate any administrative proceedings to which such notice, order, certificate, report or other document relates, provided the requirements for such notice, order, certificate, report or other document are substantially complied with and its meaning is clear.

Restriction of liability

26. No person, including the State, shall be liable in respect of any act performed in the exercise or performance of a power or duty conferred or imposed by or under this Ordinance, if the person performing the said act believes on reasonable grounds, at the time of the performance of the said act, that the performance of the said act is reasonably necessary or expedient.

Application of Ordinance to articles imported in transit

27. The Executive Committee may, at the request of the government or administration of a state or territory which is not part of the Territory, by proclamation in the *Official Gazette* apply any provision of this Ordinance to any foodstuffs, cosmetics or disinfectants which arrive at or are imported through an import harbour or other place in the Territory and which are addressed to or intended for transmission to such state or territory, and may at any time withdraw or amend such proclamation by proclamation in the *Official Gazette*.

Repeal of Ordinance 36 of 1952

28. (1) The Food, Drugs and Disinfectants Ordinance, 1952 (Ordinance 36 of 1952) is hereby repealed.

(2) Any proclamation, regulation, notice, authority or order issued, made or granted, or any other thing done in terms of any provision of the said Ordinance, shall, in so far as it is not inconsistent with the provisions of this Ordinance, be deemed to have been issued, made, granted or done in terms of the corresponding provision of this Ordinance.

Short title

29. This Ordinance shall be called the Foodstuffs, Cosmetics and Disinfectants Ordinance, 1979.

[Section 1(1)(c) of the Health Act 21 of 1988, which brought this Ordinance into force in any part of South West Africa where it was not already in force, provided the following transitional provision:

“Every regulation promulgated under a law referred to in paragraph (a) **[which includes this Ordinance]**, and every notice, mandate, order, authorisation, declaration, prohibition, licence, appointment, designation, certificate, permission, consent, approval, exemption, donation, rule or registration promulgated, issued, granted, made or done, in terms of a provision of a law referred to in paragraph (a) **[which includes this Ordinance]** or (b), and that is in force on the day preceding **[sic]** the date of the coming into operation of this Act, shall, in conjunction with the law in terms of which it has been promulgated, issued, granted, made or done, except when it will clearly be unsuitable because prerequisites specified by law have not been complied with in respect of a part of the territory of South West Africa to which it is made applicable by this Act, or for another reason, or only concerns a particular

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place, area, person or group of persons, be of force and effect in every part of the territory of South West Africa where on the day preceding the date of the coming into operation of this Act it is not already of force and effect.”

Section 1(2) of Act 21 of 1988 provides the following transitional provision:

“In the application of the laws referred to in subsection (1)(a) or (b) **[which include this Ordinance]**, and of the regulations, notices, mandates, orders, authorisations, declarations, prohibitions, licences, appointments, designations, certificates, permission, consent, approval, exemptions, donations, rules or registration referred to in subsection (1)(c), in a part of the territory of South West Africa where on the day preceding the date of the coming into operation of this Act they were not of force and effect, every word or expression therein to which, in the application thereof in a part of the territory of South West Africa excluding the Rehoboth Gebiet where they were indeed of force and effect on the said day, a particular interpretation was given in terms of legal provision or otherwise, shall be given the same interpretation, according to whether the central authority or a representative authority is entrusted with the application thereof.”]