



Republic of Namibia
Annotated Statutes

Sugar Act 28 of 1936 (SA)

(SA GG 2365)

came into force in South West Africa on 6 May 1955 when the amendments made by Act 17 of 1955, including the insertion of section 10(2), came into force

APPLICABILITY TO SOUTH WEST AFRICA: 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”. There is no definition of “Union” or “Republic”. This wording does not seem to make amendments to the Act automatically applicable to South West Africa. However, the amendments contained in Act 17 of 1955 are presumably applicable to South West Africa since it was that amending Act which applied the principal Act to South West Africa. There was only one other amending Act in South Africa – the *Sugar Amendment Act 26 of 1958* (SA GG 6109) – which was not made expressly applicable to South West Africa. The Act was repealed in South Africa in its entirety by the *Sugar Act 9 of 1978* (RSA GG 5907), which was brought into force on 27 April 1979 by Proc. R.81/1979 (RSA GG 6419). However, this repeal came into force in South Africa after the date of transfer to South West Africa; it was not applicable to South West Africa because it was not made expressly so applicable.

TRANSFER TO SOUTH WEST AFRICA: The administration of the Act (which was the responsibility of the Minister of Economic Affairs) was transferred to South West Africa by the Executive Powers (Commerce) Transfer Proclamation (AG 28 of 1978), dated 28 April 1978.

as amended by

Sugar Amendment Act 17 of 1955 (SA) (SA GG 5465)

came into force on date of publication: 6 May 1955;
also published in OG 1902

ACT

To provide for the control of the sugar industry by agreements entered into between growers, millers and refiners of sugar or by determinations made by the Minister of Commerce and Industries, the control of the prices at which certain sugars may be sold or disposed of, and for matters incidental thereto.

[The Government Gazette does not state the date of assent or which language version was signed.]

ARRANGEMENT OF SECTIONS

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1. Publication of agreements between growers, millers and refiners
2. Determination of terms of agreement by Minister and publication thereof
3. Agreement or determination may provide for different rights and obligations and for levies upon growers and millers
4. Sugar of prescribed grade to be taken into account in determining base price of sugar
5. Grower or miller to whom no quota assigned under agreement or determination
6. Power of Minister to prescribe sugar prices, maximum output of white sugar and grade of sugar to be sold at fixed price
7. Miller may arrange with other miller to carry out his obligations
8. Evidence
9. Penalties
10. Application of Act
11. Regulations
12. Repeal of Act 47 of 1926 and section 11 of Act 25 of 1932
13. Interpretation of terms
14. Short title

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

[The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3(a) that as from 31 May 1961, any reference to the Union of South Africa in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic.]

Publication of agreements between growers, millers and refiners

1. (1) If the Minister is satisfied -
 - (a) that an agreement has been entered into, whether before or after the commencement of this Act, between representatives of growers, millers and refiners, in which provision is made -
 - (i) for a formula for determining a base price of sugar and for fixing, on the basis of such base price, the prices to be paid for sugar cane by millers to growers;
 - (ii) for the regulation and restriction of the production of sugar cane and sugar, the regulation and control of the marketing and export of sugar, and the nature of the obligations of the various growers, millers and refiners in connection therewith;
 - (iii) for the establishment of a board for the purpose of carrying out the agreement and for exercising such functions as may be assigned to such board thereunder; and
 - (iv) for any other matter affecting the sugar industry, the inclusion of which in the agreement is approved or required by the Minister;
 - (b) that such agreement has been approved -
 - (i) by not less than ninety per cent. of growers who have together produced not less than ninety per cent. of the total weight of sugar cane produced in the Union by growers during the twelve months ending upon the thirty-first day

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of December of the year preceding the year in which the agreement has been entered into; and

- (ii) by millers who have together manufactured not less than ninety per cent. of the total weight of sugar manufactured in the Union by millers during the said twelve months; and
- (c) that it would be in the public interest to publish the agreement under the provisions of this Act,

he may publish the agreement in the *Gazette*.

(2) In calculating, for the purposes of sub-paragraph (ii) of paragraph (b) of sub-section (1), the total weight of sugar manufactured in the Union, the weight to be included in such total weight shall, in the case of raw sugar which has been refined, be the weight of the raw sugar.

(3) If an agreement amending an agreement published under sub-section (1) is entered into between representatives of growers, millers and refiners, the Minister may, if he is satisfied that the amending agreement has been approved in the manner set forth in paragraph (b) of sub-section (1), and that it would be in the public interest to publish the amending agreement under the provisions of this Act, publish the amending agreement in the *Gazette*.

(4) On the publication of the agreement or amending agreement in the *Gazette*, it shall become binding upon every grower who supplies sugar cane to any miller to whom a quota in respect of his manufacture of sugar has been assigned in terms of the agreement or amending agreement, upon every miller to whom such a quota has been so assigned, and upon every refiner, as if such grower, miller or refiner had signed the agreement or amending agreement.

Determination of terms of agreement by Minister and publication thereof

- 2. (1) The Minister may -
 - (a) if at any time no agreement which has been published or which he is prepared to publish under section *one* is in existence, and if he is satisfied that it would be in the interest of the sugar industry to do so, determine the terms of an agreement between growers, millers and refiners in which provision is made for the matters referred to in paragraph (a) of subsection (1) of section *one*;
 - (b) amend from time to time or revoke any determination so made; and
 - (c) publish such determination or amendment in the *Gazette*.

(2) On the publication of any such determination or amendment in the *Gazette*, it shall become binding upon every grower who supplies sugar cane to any miller to whom a quota in respect of his manufacture of sugar has been assigned in terms of the determination or amendment, upon every miller to whom such a quota has been so assigned, and upon every refiner, as if it had been an agreement or amending agreement, as the case may be, signed by such grower, miller or refiner.

Agreement or determination may provide for different rights and obligations and for levies upon growers and millers

3. Any agreement, determination or amendment thereof published under section *one* or *two* may provide -

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- (a) that different growers, millers or refiners, or different classes of growers, millers or refiners, shall have different rights and obligations thereunder; and
- (b) for levies upon growers or millers for the purpose of carrying out the terms of such agreement, determination or amendment.

Sugar of prescribed grade to be taken into account in determining base price of sugar

4. In determining the base price of sugar for the purpose of fixing the prices to be paid for sugar cane under any agreement or determination published under section *one* or *two*, the quantity of sugar of a grade prescribed under paragraph (b) of sub-section (1) of section *six*, which has been sold during the period with reference to which such base price is to be calculated, shall be included in the quantity of sugar upon which the calculation is to be based.

[section 4 amended by Act 17 of 1955]

Grower or miller to whom no quota assigned under agreement or determination

5. (1) Notwithstanding anything contained in any agreement or determination or amendment thereof published under section *one* or *two*, any grower or miller upon whom, in terms of sub-section (4) of section *one* or of sub-section (2) of section *two*, such agreement, determination or amendment is not binding, may sell, whether for manufacture or consumption, as the case may be, in the Union or elsewhere, any sugar cane or sugar produced or manufactured by him.

(2) During the currency of any such agreement or determination every such miller shall, in respect of each year and not later than six months after the expiry thereof -

- (a) export a quantity of sugar which bears, in relation to the total quantity of sugar manufactured by him during that year, the same proportion as the total quantity of sugar exported in terms of such agreement, determination or amendment during that year by millers to whom quotas in respect of the production of sugar have been assigned under such agreement, determination or amendment, bears to the total quantity of sugar manufactured by such millers during that year; and
- (b) sell or place at the disposal of the board for sale on his behalf to manufacturers who are entitled to a rebate in price in respect of sugar purchased by them from the millers referred to in paragraph (a) or from refiners, at the same rebate in price as is allowed to such manufacturers by such millers or refiners, a quantity of sugar of a grade required by such manufacturers which bears the same proportion in relation to the total quantity of sugar manufactured by him during that year as the total quantity of sugar sold to such manufacturers at a rebate during that year by such millers and refiners, bears to the total quantity of sugar manufactured by such millers during that year.

(3) Whenever the board receives or makes in respect of any year any estimate in connection with the quantity of sugar which -

- (a) will be exported in terms of any such agreement, determination or amendment; or
- (b) will be sold at a rebate to manufacturers referred to in paragraph (b) of sub-section (2); or
- (c) will be manufactured,

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by millers to whom quotas have been assigned as described in that sub-section, or by refiners, as the case may be, it shall inform every miller referred to in sub-section (1) of the particulars of such estimate.

(4) For the purposes of sub-section (2), the total quantities of sugar which, according to the final estimate made by the board in respect of any year, have during that year been exported, sold or manufactured as described in sub-section (3), shall be deemed to be the total quantities of sugar so exported, sold or manufactured, as the case may be.

(5) No miller shall be relieved of his obligations under sub-section (2) in respect of any sugar by reason of the fact that he is unable to acquire such sugar by purchase.

Power of Minister to prescribe sugar prices, maximum output of white sugar and grade of sugar to be sold at fixed price

6. (1) The Minister may by notice in the *Gazette* -
- (a) prescribe the maximum wholesale or retail price at which any type or grade of sugar may be sold or disposed of for consumption in the Union or the territory by any person in any place or area specified in the notice;
 - (b) prescribe a grade of sugar which shall, during any year in respect of which a maximum retail price for a particular grade of sugar has been prescribed under paragraph (a), be sold by millers for consumption in the Union and the territory;
 - (c) determine the maximum quantity of white sugar which may be sold or disposed of by millers and refiners for consumption in the Union and the territory in any one year during the period during which any agreement or determination under section *one* or *two* is in force.

[subsection (1) substituted by Act 17 of 1955]

(2) If the Minister has prescribed a grade of sugar under paragraph (b) of sub-section (1) in respect of any year, every miller shall during that year manufacture and sell for consumption in the Union or the mandated territory, such quantities of sugar of the grade prescribed under the said paragraph and at such times as the board may from time to time require of such miller: Provided that the board shall not during any year require any miller so to manufacture and sell a greater quantity of sugar of the said grade than a quantity which bears the same proportion, according to the estimate of the board, to the total quantity of such sugar which will be so manufactured and sold by millers during that year, as the total quantity of sugar which such miller will manufacture for such consumption during that year bears to the total quantity of sugar which will be manufactured by all millers for such consumption during that year.

[subsection (2) amended by Act 17 of 1955]

(3) The Minister may amend from time to time or revoke any notice issued under this section.

Miller may arrange with other miller to carry out his obligations

7. Any miller upon whom under the provisions of sub-section (2) of section *five* or under any similar provisions relating to the export of sugar or the sale of sugar to manufacturers by millers, contained in an agreement, determination or amendment thereof published under

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section *one* or *two*, or under the provisions of sub-section (2) of section *six*, an obligation is imposed, may relieve himself of that obligation by entering into an agreement with a refiner or another miller whereby that refiner or miller undertakes to fulfil that obligation, and thereupon such refiner or other miller shall be subject to that obligation and liable to any penalty provided for the failure to fulfil the same.

Evidence

8. Proof of publication in the *Gazette* of any agreement or amending agreement under section *one* shall, in the absence of proof of fraud, be conclusive evidence that all the provisions of that section, and of any regulations made under this Act, in respect of matters precedent and incidental to the publication of such agreement or amending agreement, have been complied with.

Penalties

9. (1) Any person who -
- (a) sells or disposes of any sugar under the representation that it is refined sugar whereas in fact it is not such; or
 - (b) contravenes or fails to comply with the provisions of paragraph (a) or (b) of sub-section (2) of section *five*, or any similar provisions relating to the export of sugar or the sale of sugar to manufacturers by millers, contained in an agreement, determination or amendment thereof published under section *one* or *two*, or the provisions of sub-section (2) of section *six*, or of a notice issued under paragraph (a) of sub-section (1) of section *six*,

shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred pounds or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

[Subsection (1) is amended by Act 17 of 1955. A fine not exceeding one hundred pounds is equivalent to a fine not exceeding N\$200.]

(2) If any person is convicted of an offence referred to in paragraph (b) of sub-section (1), other than a contravention or failure to comply with the provisions of a notice issued under paragraph (a) of sub-section (1) of section *six*, the court convicting him shall enquire into and estimate the amount of the profit made by him in consequence of his having committed such offence, and shall, in addition to any sentence which it may impose under sub-section (1), impose on the person so convicted a fine equal to the amount of the profit which the court so estimates he made in consequence of his having committed such offence.

[subsection (2) amended by Act 17 of 1955]

(3) Notwithstanding anything contained in any other law, magistrates' courts shall have jurisdiction to impose any penalty prescribed by this Act.

Application of Act

10. (1) The provisions of paragraph (a) of sub-section (1) of section *six*, and of paragraph (a) of sub-section (1) of section *nine*, shall not apply to candy, loaf, castor, icing or cube sugar.

- (2) This Act shall apply also in the territory.

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[section 10 amended by Act 17 of 1955, which also inserts subsection (2)]

Regulations

11. (1) The Governor-General may make regulations for the better carrying out of the objects and provisions of this Act and of any agreement or determination or amendment thereof which has been published under section *one* or *two*.

(2) Any regulations made under this section may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding imprisonment for a period of six months together with a fine of fifty pounds.

[The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3(b) that as from 31 May 1961, any reference to the Governor-General in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic or the State President as the circumstances may require.
A fine of fifty pounds is equivalent to a fine of N\$100.]

Repeal of Act 47 of 1926 and section 11 of Act 25 of 1932

12. The Sugar Prices Act, 1926, and section *eleven* of the Financial Adjustments Act, 1932, are hereby repealed.

Interpretation of terms

13. In this Act, unless inconsistent with the context -

“the board” means the board established under any agreement or determination published under section *one* or *two*;

“grower” means a person who produces sugar cane for the purpose of the manufacture of sugar: Provided that for the purposes of paragraph (b) of sub-section (1) of section *one*, “grower” shall not include -

- (i) a person of non-European descent; or
- (ii) a person who manufactures sugar; or
- (iii) a person who is a director of a company which manufactures sugar; or
- (iv) a partnership, syndicate or company in which a person who manufactures sugar or who is a director of a company which manufactures sugar holds an interest of more than one-third;

“territory” and “mandated territory” mean the Territory of South-West Africa

[Act 17 of 1955 substitutes the definition of “territory” and “mandated territory” for the definition of “mandated territory”. However, this makes the alphabetical order incorrect as the definition of “territory” and “mandated territory” should appear after the definition of “refined sugar”.
The substituted definition should end with a semicolon.]

“miller” means a person who manufactures sugar from sugar cane;

“Minister” means the Minister of Economic Affairs;

[definition of “Minister” amended by Act 17 of 1955]

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“refiner” means a person who converts raw sugar into refined sugar at a refinery;

“refined sugar” means all such sugars of refined quality as have been refined by the bone-char-filter, the vegetable-carbon or the carbonatation process;

[In South Africa, Act 26 of 1958 substituted the definition of “refined sugar” as follows:

“refined sugar” means all such sugars of refined quality as have been refined by the bone-char-filter, the vegetable carbon, the carbonatation or the melt sulphitation process or by any process or combination of processes approved by the Minister in consultation with the South African Sugar Association;

However, amendments to Act 28 of 1936 were not automatically applicable to South West Africa by virtue of the wording of section 10(2), and Act 26 of 1958 was not independently applicable to South West Africa. The substituted definition is included here for information, but this substitution does not appear to have been applicable to South West Africa. (This was the only amendment made by Act 26 of 1958.)]

[The definition of “territory” and “mandated territory” should be placed here.]

“year” means a period of twelve months ending upon the thirtieth day of April.

Short title

14. This Act shall be called the Sugar Act, 1936.