



Republic of Namibia
Annotated Statutes

Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977

(OG 3668)

came into force on date of publication: 15 November 1977

as amended by

Executive Powers Transfer Amendment

Proclamation, AG 10 of 1978 (OG 3712)

sections 1(a), 2(a) and 4(a) deemed to have come into operation on 15 November 1977 (section 6(2) of AG 10 of 1978); remainder of Proclamation came into force on the date of publication: 2 March 1978

Second Executive Powers Transfer Amendment

Proclamation, AG 82 of 1978 (OG 3873)

deemed to have come into force on 2 March 1978 (section 2 of AG 82 of 1978)

Executive Powers Transfer (General Provisions) Amendment

Proclamation, AG 20 of 1982 (OG 4668)

deemed to have come into force on 2 March 1978 (section 2 of AG 20 of 1982)

South West Africa Legislative and Executive Authority Establishment

Proclamation, RSA Proc. 101 of 1985 (RSA GG 9790)

came into force on date of publication: 17 June 1985; relevant section of RSA Proc. 101 of 1985 (section 36) amended with respect to this transfer proclamation by RSA Proc. 222 of 1985 (RSA GG 10035)

PROCLAMATION

of the

ADMINISTRATOR-GENERAL FOR THE TERRITORY OF SOUTH WEST AFRICA

PROVISIONS OF GENERAL APPLICATION ON THE TRANSFER OF
EXECUTIVE POWERS TO THE ADMINISTRATOR-GENERAL

(Approved by the State President on 8 November 1977)

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Under the powers vested in me by Proclamation 181 of 19 August 1977, I hereby make the laws set out in the Schedule.

M. T. STEYN
Administrator-General

Windhoek, 11 November 1977

SCHEDULE

Definitions

1. (1) In this Proclamation and in any transfer proclamation, unless the context indicates otherwise -

“commencement”, in relation to this Proclamation or a transfer proclamation, means its coming into operation on the date on which it is published in the *Official Gazette*;

“head”, in relation to a department, means the officer who is the head of that department in terms of the Public Service Act, 1957 (Act 54 of 1957); and, in relation to the Department of Posts and Telecommunications, means the Postmaster General;

“law” means an Act of the Parliament of the Republic (including the Exchequer and Audit Act, 1975 (Act 66 of 1975)), an ordinance of the Legislative Assembly of the territory, any proclamation issued under such an Act or ordinance; and any regulation, rule or other enactment issued under such an Act or ordinance or such a proclamation, in so far as it relates to or applies in the territory or is connected with its administration or the administration in it of a matter which in terms of a transfer proclamation is administered by the Administrator-General;

“officer”, in relation to a department, means an officer as defined in the Public Service Act, 1957 (Act 54 of 1957); and, in relation to the Department of Posts and Telecommunications, means an officer as defined in the Post Office Service Act, 1974 (Act 66 of 1974);

“*Official Gazette*” means the *Official Gazette* of the territory;

“Republic” means the Republic of South Africa;

“territory” means the territory of South West Africa;

“the Minister”, in relation to a law, means the Minister of the Republic mentioned in a transfer proclamation, whose administration of a matter to which that law relates, is transferred to the Administrator-General by that transfer proclamation;

“transfer proclamation” means a proclamation by the Administrator-General by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General.

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Application of this Proclamation

2. The provisions of this Proclamation shall, as from the commencement of a transfer proclamation and save in so far as that transfer proclamation provides otherwise, apply in respect of any law relating to a matter which in terms of that transfer proclamation is administered by the Administrator-General.

Application of laws

3. (1) Subject to the provisions of subsection (2), any reference in any law referred to in section 2 -

- (a) to the Minister or to the Minister of Finance or State President or Parliament (including the Senate or the House of Assembly) or Government of the Republic, shall be construed as a reference to the Administrator-General;
- (b) to the State, shall be construed as including a reference to the Administrator-General;
- (c) to the Republic, shall be construed as a reference to the territory;
- (d) to the *Government Gazette* of the Republic, shall be construed as a reference to the *Official Gazette*.

(2) The provisions of subsection (1) shall not apply with reference to -

- (a) those provisions of any law referred to in section 2 which provide for or relate to the appointment, promotion, transfer, secondment, remuneration, allowances, discipline, discharge or suspension, the retirement, leave and pension rights and privileges or any other conditions of service of any person who is, or is engaged for employment, in the service of the State or the Government of the Republic or any of its departments in terms of that law or any other law;
- (b) those provisions of any law so referred to which provide for or relate to the institution, constitution or control of any juristic person or any board or other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic;
- (c) such provisions of any law so referred to as the Administrator-General may determine, to such extent or with reference to such matter and with effect from such date (which may be a date earlier than the date of the determination) as he may determine, and made known by notice in the *Official Gazette*.

[Paragraph (c) is “deemed to have been amended” by section 36(b)(ii)(aa) of RSA Proc. 101 of 1985. This change is incorporated as an amendment here.]

(3) The provisions of paragraph (a) of subsection (2) shall not prohibit the appointment by or on the authority of the Administrator-General, to an office provided for in a law referred to in section 2, of any person referred to in that paragraph who has been designated or made available for that purpose by the authority in whose service such person is.

(4) 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

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territory and in the Republic, and which is published in the *Government Gazette* of the Republic, shall, notwithstanding the provisions of subsection (1), apply in the territory if such proclamation, regulation or rule or the notice by which it is so published, contains a statement that it was or is issued or made with the consent of the Administrator-General, and applies also in the territory: Provided that for the purposes of the application of such proclamation, regulation or rule in the territory, the provisions of subsection (1) shall apply.

- (5) 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.

[subsection (5) inserted by AG 10 of 1978 with effect from 2 March 1978, and substituted by AG 20 of 1982, with the substitution being deemed to have come into effect on 2 March 1978]

4.

[Section 4(1) was substituted by AG 10 of 1978, with the substitution deemed to have come into operation on 15 November 1977, at the same time as the original Proclamation.

Section 4(2)(a) was substituted by AG 10 of 1978.

Section 4(6)(a) was substituted by AG 10 of 1978 and “deemed to have been amended” by section 36(b)(ii)(bb) of RSA Proc. 101 of 1985 as that Proclamation originally stood. However, section 36(b)(vi) of RSA Proc. 101 of 1985 was amended by RSA Proc. 222 of 1985 to provide that section 4 was “deemed to have been repealed”. This repeal was effective 30 days after the date of publication of RSA Proc. 222 of 1985 (which was published on 13 December 1985).

In case it is relevant for historical purposes, section 4 stood as follows immediately prior to its repeal:

“Delegation of powers

4. (1) The Administrator-General may delegate any power other than a power to issue a proclamation or make regulations or rules which is conferred upon him by any law as applied by section 3(1) and the relevant transfer proclamation, and which but for the provisions of this subsection he would not be empowered to delegate, to the head of the department in which the administration of that law is carried out or to an officer of the department concerned who is stationed in the territory.

- (2) (a) The said head may delegate any power delegated to him under subsection (1) or, delegated to or conferred upon him under or by any other law, notwithstanding anything to the contrary contained in that other law, to an officer referred to in subsection (1).
- (b) The provisions of paragraph (a) shall not prohibit any delegation authorized by such other law.

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(3) The said head shall not be deprived of a power delegated by him to such an officer, and may alter or withdraw any decision given by such officer in the exercise of that power.

(4) The Administrator-General shall not be deprived of a power delegated by him, and may alter or withdraw any decision given in the exercise of that power, including a decision given by the said head under subsection (3).

(5) Where a power has been delegated to the holder of a post, that power may be exercised by the person who for the time being performs the functions attached to such post.

(6) (a) The Administrator-General may designate the post held by an officer referred to in subsection (1) by such name as he may deem fit, and such name shall be made known by notice in the *Official Gazette*.

(b) For the purposes of any law or under which any power is conferred upon the holder of such post, anything done by or on behalf of or in relation to that holder under the name made known as aforesaid, instead of a name or designation provided for in that law, shall be deemed to have been done under the last-mentioned name or designation, and any document issued or submitted or dealt with in any other manner by or on behalf of or in relation to that holder in that connection, shall be construed accordingly.

(c) Paragraphs (a) and (b) shall *mutatis mutandis* apply also with reference to those provisions of any transfer proclamation issued before the commencement of this Proclamation, that provide for the delegation of powers to an officer or other person in the service of the State who is stationed in the territory.”]

4bis.

[Section 4bis was inserted by AG 10 of 1978, amended by AG 82 of 1978 and “deemed” to have been repealed by section 36(b)(ii)(cc) of RSA Proc. 101 of 1985.

In case it is relevant for historical purposes, section 4bis stood as follows immediately prior to its repeal:

“Exercising of powers of Administrator-General by Chief Director

4bis (1) Whenever the Administrator-General is absent or for any other reason unable to act, the Chief Director of the Office of the Administrator-General may exercise, subject to the authority of the Administrator-General and on the conditions (if any) determined by him, any power other than a power to issue a proclamation or make regulations or rules, conferred upon the Administrator-General by any law.

(2) Any decision of the said Chief Director given in the exercise of a power referred to in subsection (1), shall be deemed to be a decision of the Administrator-General unless such decision is withdrawn by the Administrator-General or, if it is amended by him, as amended by him: Provided that any amendment or withdrawal of such decision shall not affect the validity of anything done under such a decision before the amendment or withdrawal thereof.”]

Defrayal of expenditure in connection with the administration of certain affairs of the territory

4ter. Any expenditure determined by the Secretary to the Treasury -

- (a) in connection with the administration of the Department of Customs and Excise in the territory; or
- (b) in or in respect of the territory of any other department of the Republic of which the administration in the territory is not administered by the Administrator-General; or
- (c) in connection with the administration in or in respect of the territory of any law or a provision of any law excluded in terms of this Proclamation or any transfer proclamation from the authority of the Administrator-General,

shall, subject to appropriation of such expenditure by the Administrator-General, be defrayed from the South West Africa Account referred to in section 2 of the Exchequer and Audit Act,

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1975 (Act 66 of 1975), as if the relevant administration is carried on by the Administrator-General or takes place under his authority.

[section 4fer inserted by AG 10 of 1978]

Transitional provisions

5. Anything done under a law referred to in section 2 before the commencement of a transfer proclamation, shall be deemed to have been done under that law as applied by section 3(1) and the relevant transfer proclamation.

Amendment of Proclamation AG. 3 of 1977

6. The Executive Powers Transfer Proclamation, 1977, is hereby amended -
- (a) by the substitution, in the definition of “law” in section 1, for the words “and any proclamation” of the words “any proclamation issued under such an Act or ordinance, and any”, and for the words “or ordinance” of the words “ordinance or proclamation”;
 - (b) by the insertion, in subsection (2) of section 4, after the words “that subsection” of the words “or, notwithstanding anything to the contrary contained in any other law, delegated to him under or conferred upon him by such other law,”; and
 - (c) by the addition to the said subsection (2) of the following paragraph, the existing subsection becoming paragraph (a):
 - "(b) The provisions of paragraph (a) shall not prohibit any delegation authorized by such other law.”.

Short Title

[The word “title” in the heading should not be capitalised.]

7. This Proclamation shall be called the Executive Powers Transfer (General Provisions) Proclamation, 1977.