HEALTH

Public Health Act 36 of 1919, as amended by SWA Proclamation 36 of 1920.

Summary: This Act (SA GG 979) makes provision for the prevention and control of infectious diseases, venereal diseases and epidemics. It also regulates sanitation, food and public water supplies. It will be repealed by the Public and Environmental Health Act 1 of 2015 when that Act comes into force.

Applicability to SWA: The Act was made applicable to South West Africa by the SWA Public Health Proclamation 36 of 1920 (OG 37) which also amended the Act as it applied to SWA. This Proclamation did not make future amendments to the Act in South Africa automatically applicable to SWA, and none of the subsequent amending acts were made expressly so applicable. The Health Act 21 of 1988 (OG 5651) extended the application of the Act to all parts of SWA.

Transfer of administration to SWA: Section 159 defines “Minister” as “the Minister holding the portfolio of Health”. Therefore the administration of this Act was probably transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated 1 December 1977.

The Act was replaced in South Africa by the Health Act 63 of 1977 (RSA GG 5558). The relevant section of this repealing act came into force on 1 September 1977 (RSA Proc. R.175/1977, RSA GG 5716), prior to the probable date of transfer. However, this Act was not made expressly applicable to SWA and would not have applied automatically.

Amendments: SWA Proclamation 36 of 1920 (OG 37) amends the Act as it applies to SWA. (Proc. 28/1923 (OG 118) makes SWA Proclamation 36 of 1920 applicable to the Rehoboth Gebiet.)

Ord. 7/1932 (OG 476) amends section 36 of the Act.

Proc. 16/1936 (OG 676) amends section 71.

Proc. 20/1938 (OG 761) amends section 86 and inserts sections 26bis and 34bis.

Ord. 50/1957 (OG 2094) amends section 50 and section 51.

Ord. 35/1958 (OG 2153) amends sections 5, 115, and 159, and inserts sections 8, 8bis, 8ter, 17bis, 91bis, 92bis, 96bis and 124bis.

Ord. 10/1964 (OG 2565) amends section 16.

Ord. 2/1971 (OG 3147) amends section 130.

Regulations: Pre-independence regulations have not been researched.

**Summary:** This Ordinance (OG 2614) provides for the certification of institutions for the treatment of persons addicted to drink, drugs, gambling, etc. and the detention of such persons for treatment. It was brought into force on 1 September 1965 by Proc. 78/1965 (OG 2674).

**Amendments:** Section 63(1) of the *Abuse of Dependence-Producing Substances and Rehabilitation Centres Act 41 of 1971* states:

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

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

**Regulations:** Pre-independence regulations have not been researched.

**International Health Regulations Act 28 of 1974,** as amended to December 1977.

**Summary:** This Act (RSA GG 4219) applies the International Health Regulations adopted by the World Health Assembly in 1969 to South Africa.

On 25 May 1951 WHO Member States adopted the *International Sanitary Regulations – World Health Organisation Regulations No. 2*, which entered into force internationally on 01 October 1952 (Source: UNTC). In accordance with Article 106 – 110 of the ISR the Regulations entered into force in the Union of South Africa (including the territory of South West Africa) upon acceptance on the same date 01 October 1952 (Source: UNTC).

The International Sanitary Regulations were replaced by and renamed the *International Health Regulations* in 1969. The 1969 Regulations were subject to minor modifications in 1973 and 1981.

The International Health Regulations were replaced in turn by the *International Health Regulations, 2005*, which entered into force internationally on 15 June 2007 (source: WHO). Namibia is bound by these 2005 Regulations from that date in accordance with Articles 21(a) and 22 of the WHO Constitution.


However, this South African statute, which is still in force in Namibia, incorporates the earlier 1969 version of the International Health Regulations directly into Namibian domestic law.
**Applicability to SWA:** Section 1 defines “Republic” to include “the territory of South West Africa”. Section 5 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

**Transfer of administration to SWA:** The administration of this Act was transferred to SWA by the Executive Powers (Health) Transfer Proclamation (AG 14/1977), dated 1 December 1977. There was only one amendment to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Transfer of Powers and Duties of the State President Act 97 of 1986* (RSA GG 10438) – which was not made expressly applicable to SWA.

**Amendments:** The regulations in this law are amended by RSA Proc. R.139/1975 (RSA GG 4741).

**Regulations:** Pre-independence regulations have not been comprehensively researched.

Supplementary regulations are contained in RSA GN R.2001/1975 (RSA GG 4878), and amended by RSA GN R.2069/1978 (RSA GG 6188) and RSA GN R.790/1980 (RSA GG 6954). The 1975 and 1980 Notices specifically mention that they are being effected with the consent of the Administrator-General for the Territory of South-West Africa and that they also apply in the Territory.

**Notices:** Designations of approved ports and airports are contained in RSA Proc 241/1975 (RSA GG 4877).

### Foodstuffs, Cosmetics and Disinfectants Ordinance 18 of 1979.

**Summary:** This Ordinance (OG 4011) controls the sale, manufacture and import of foodstuffs, cosmetics and disinfectants. It repeals the Food, Drugs and Disinfectants Ordinance 36 of 1952.

**Amendments:** This Ordinance originally authorised local authorities to enforce it locally. It was extended to all of SWA by the Health Act 21 of 1988 (OG 5651).

**Regulations:** Pre-independence regulations have not been comprehensively researched. Regulations relating to the standards of food, drugs and disinfectants are contained in GN 195/1968 (OG 2949); they were amended after independence by GN 123/1994 (GG 883). These regulations were originally made in terms of sections 13 and 42 of the Food, Drugs and Disinfectants Ordinance 36 of 1952, and survive pursuant to section 28(2) of this Ordinance.

**Notices:** Standards regarding salt and iodised salt are amended in GN 124/1994 (GG 883).

**Related laws:** See GN 179/2008 (GG 4088) for exemptions from the application of section 29 of the Medicines and Related Substances Control Act 13 of 2003 (GG 3051) to certain substances approved under this Act.

*Public and Environmental Health Act 1 of 2015.*
Summary: This Act (GG 5740) provides a framework for a structured uniform public and environmental health system in Namibia. It covers notification, prevention and control of diseases and sexually-transmitted infections; maternal, ante-natal and neo-natal care; water and food supplies; infant nutrition; waste management; health nuisances; public and environmental health planning and reporting. It repeals the Public Health Act 36 of 1919 (SA GG 979), the SWA Public Health Proclamation 36 of 1920 (OG 37) (which made the Public Health Act 36 of 1919 applicable to South West Africa as well as amending it) and some of its other amendments. The Act does not amend any other laws, but section 91 states: “If any other law is in conflict or inconsistent with this Act, this Act prevails.” The Act will be brought into force on a date set by the Minister by notice in the Government Gazette.

Regarding the Public Health Act 36 of 1919, the amending Acts repealed are Ord. 50/1957 (OG 2094), Ord. 35/1958 (OG 2153), and Ord. 2/1971 (OG 3147). The amendments made by Ord. 7/1932 (OG 476), Proc. 16/1936 (OG 676), Proc. 20/1938 (OG 761) and Ord. 10/1964 (OG 2565) are not repealed.

Savings: Section 94 provides that anything done under a law repealed by this Act which could have been done under a corresponding provision of this Act will be deemed to have been done under this Act.

Regulations: The savings clause could include regulations, as regulations on a variety of topics are authorised by this Act. However, pre-independence regulations have not been researched.

Notices: Pre-independence notices which could survive in terms of the savings clause have not been researched.

SELECTED CASES
LM & Others v Government of the Republic of Namibia 2012 (2) NR 527 (HC).

COMMENTARY

COMMISSIONS
Commission of Inquiry into Health Services (AG 19/1981)
Commission of Inquiry into Activities, Affairs, Management and Operations of Ministry of Health and Social Service (Proc. 20/2012, GG 5013).

INTERNATIONAL LAW
Constitution of the World Health Organization (WHO), 1946
International Convention against Doping in Sport, 2005
International Health Regulations, 2005
Minamata Convention on Mercury, 2013
SADC Protocol on Health, 1999
WHO Framework Convention on Tobacco Control, 2003
See also **DISABILITIES**.

See also Atomic Energy and Radiation Protection Act 5 of 2005 (*ENVIRONMENT*).

See also **HEALTH PROFESSIONS**.

See also **HOSPITALS**.

See also **LABOUR** (health and safety at workplaces).

See also **MEDICINE**.

See also **MENTAL HEALTH AND MENTAL DISORDERS**.