

# RAILWAYS

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The authors of this index have not yet been able to determine whether any pre-independence laws on railways remain in force. Further research will be conducted.

The Railway Management Proclamation 70 of 1920 ([OG 46](#)) states:

1. (1) The control and management of the Railways and Harbours within the Protectorate of South West Africa and of all subsidiary undertakings connected therewith hitherto controlled and managed by the Railways and Harbours Administration of the Union of South Africa (hereinafter called the Railway Administration) shall continue to be vested in and to be exercised by the Railway Administration, and for that purpose

- (a) the Railway Administration shall and may have and exercise within the Protectorate all and several the powers and authorities and be subject to all the liabilities and duties, which it has, may exercise, or is subject to in the Union of South Africa under and by virtue of the Railways and Harbours Control and Management Act 1916, of the Union Parliament, the regulations now or hereafter existing thereunder, and the Railways and Harbours Control and Management Act Amendment Act 1920, of the Union Parliament;
- (b) the following acts of the Union Parliament together with any regulations now or hereafter existing thereunder shall, mutatis mutandis and so far as capable of application, have force and effect within the Protectorate:-

**The Railways and Harbours Regulation, Control and Management Act, 1916**, with the exception of the following words as contained in paragraph (e) of section 3 of the said Act, viz:

“No railway for the conveyance of public traffic and no port or harbour or similar work shall be constructed or acquired without the sanction of Parliament, but the sanction of Parliament shall not be necessary for the construction of sidings or short branch lines to mines, stores, warehouses, or other works or premises if those sidings or branch lines are not intended for public traffic.”

and also with the exception of sections 59, 62 and 63 of the said Act.

**The Railways and Harbours Regulation Control and Management Act Amendment Act 1920.**

**The Railway Board Act 1916.**

**The Railways and Harbours Service Act 1912.**

**The Railways and Harbours Strike and Service Amendment Act, 1914.**

**The Railways and Harbours Service Act Amendment and Further Provision Act 1917.**

**The Railways and Harbours. Strike and Service Act Amendment Act 1920.**

**The Crown Liabilities Act, 1910.**

- (c) all and several the provisions of the **Exchequer and Audit Act 1911**, of the Union Parliament, of the **Exchequer and Audit Act 1911 Amendment Act 1916**, of the Union Parliament and of any other law or regulation applicable within the Union defining the powers and functions of the **Controller and Auditor General and the keeping and presentation of Railways and Harbours Administration Accounts, and the receipt, custody and issue of moneys of the Railway and Harbours Administration** shall, mutatis mutandis and so far as capable of application, have force and effect within the Protectorate.

(2) Wherever in any Act or Regulation extended to the Protectorate by this Section the words “within the Union” or words to the like effect appear, there shall, in the application of the Act or regulation to the Protectorate, unless inconsistent with the context be read for those words the words “within the Protectorate” or words to the like effect.

(3) Anything whatever to the contrary and in particular any provision of an agreement dated at Berlin the 23rd November 1909, between the Imperial Governor of German South-West Africa and the Otavi Minen und Eisenbahn Gesellschaft, or of any amendment or modification thereof or addition thereto notwithstanding, the railway lines from Swakopmund to Tsumeb and from Otavi to Grootfontein shall be included in the railways referred to herein and shall be subject to the provisions of this Proclamation.

2. (1) For a period of twelve months from the date of this Proclamation the Railway Administration shall be entitled to occupy or retain possession of, and to use, all houses, buildings, premises, lands, rights in land, or water rights which, at the date of this Proclamation are temporarily held by it within the Protectorate for Railway and Harbour purposes or any purposes subsidiary thereto, and the title to which has not been acquired under and by virtue of the validation of any taking, expropriation or other acquisition thereof. During such period of twelve-months no action of ejection shall be capable of being brought against the Railway Administration in respect of any such occupation, possession or use.

(2) The owner of any property occupied, possessed or used by the Railway Administration in terms of this section shall, for the period of such occupation, possession or use, be entitled to the payment of a monthly rental therefor at a rate to be mutually agreed upon between the Railway Administration and himself and failing agreement, at a rate to be fixed by arbitration in accordance with any law of the Protectorate providing for the decision of disputes by arbitration or in the absence of any such provision, then in accordance with the provisions of the Expropriation of Lands and Arbitration Clauses Proclamation 1902, of the Transvaal Province.

3. No private railways shall be constructed within the Protectorate and no private railway, whether constructed before or after the date of this proclamation, shall be worked within the Protectorate without the written authority of the Governor-General first had and obtained.

4. (1) Proclamation No. 14 of 1919 and Martial Law Regulations Nos. 48, 51, 56, 79, 80, 81, 82, 83, 84, 88, and 91 shall be and are hereby repealed.

(2) All other laws repugnant to or inconsistent with any provisions of this Proclamation are to the extent of such repugnance or inconsistency hereby repealed.

5. Notwithstanding anything herein contained, all tariffs of rates and fares operating throughout the Railways and Harbours of the Protectorate and the subsidiary Services connected therewith at the date of this Proclamation shall continue until duly altered or amended.

6. This Proclamation may be cited for all purposes as the "Railway Management Proclamation, 1920".

GOD SAVE THE KING.

Given under my hand at Windhoek this

18th day of November, 1920.

GIJS. R. HOFMEYR

Administrator

Most of the laws contained in the list in this Proclamation have since been repealed.

- The *SA Railways and Harbours Regulation, Control and Management Act 22 of 1916* was repealed in South Africa by the *SA Railways and Harbours Control and Management (Consolidation) Act 70 of 1957* ([SA GG 5908](#)).
- The *Railways and Harbours Regulation Control and Management Act Amendment Act 32 of 1920* was repealed by the *SA Railways and Harbours Control and Management (Consolidation) Act 70 of 1957* ([SA GG 5908](#)).
- The *Railway Board Act 17 of 1916* was repealed by the *RSA Railway Board Act 73 of 1962*.
- The *Railways and Harbours. Strike and Service Act Amendment Act 34 of 1920* was repealed by the *RSA Railways and Harbours Pensions Act 35 of 1971* ([RSA GG 3104](#)), which was applicable to SWA and remained in force in Namibia until it was repealed by the *Repeal of Obsolete Laws Act 21 of 2018*.

One exception is the **Crown Liabilities Act 1 of 1910**, which has not been repealed. According to *Mwandingi v Minister of Defence* 1990 NR 363 (HC) at 377C-D (approved of on appeal in *Minister of Defence v Mwandingi* 1993 NR 63 (SC) at 77C-F),

“the Crown Liabilities Act 1 of 1910 was extended by the Railway Management Proclamation 20 of 1920 to the territory [this is an error; the correct citation for this Proclamation is Proclamation 70 of 1920]. It is true that it was so extended for purposes of that proclamation, but the act applied in its entirety and it seems to me, once it was extended, it was accepted by our courts as also binding on all other, at that stage, departments (see *Hwedhanga v Cabinet for the Territory of South West Africa* 1988 (2) SA 746 (SWA); *Binga v Cabinet for South West Africa & Others* 1988 (3) SA 155 (A)).”

The Crown Liabilities Act 1 of 2010 is accordingly listed in the more general category of LAW.

There are three other laws in the list contained in the Railway Management Proclamation 70 of 1920 ([OG 46](#)) for which no repeals have been located:

- **Railways and Harbours Service Act 28 of 1912**
- **Railways and Harbours Service Act Amendment and Further Provision Act 7 of 1917**
- **Railways and Harbours Service Act Amendment and Further Provision Act 33 of 1917.**

These three laws may still be technically in force, but it is not clear if they have any ongoing effect.

According to research by the late Klaus Dierks:

“The legal basis for the operation of the Namibian railways under South African control was the [South-West Africa Railways and Harbours] Act No. 20 of 1922 which provided that the railway and harbours in the then territory of ‘South-West Africa’ as they existed on the 10th of January 1920, should as from that date be transferred to and vested in the Governor-General of the (South African) Union and should be controlled, managed and worked by the Railway Administration of the Union as part of the South African railway system...

Under the pressure of the League of Nations the South African Government was obliged to amend the ‘South West Africa Railways and Harbours Act, 1922’ by Act No. 9 of 1930 where it was stipulated that Act 22 should be carried only ‘subject to the Mandate issued by the Council of the League of Nations in pursuance of Article 22 of the Treaty of Versailles’. This Amendment Act No. 9 of 1930 to Act 20 of 1922 is of great importance, although subsequently it was ignored by the South African authorities...

The former Interim’s Government of Namibia has transformed the Namibian railways and adjacent transport means into a state-owned corporation ‘National Transport Corporation’ which came into being on 1 July 1988. The name of the corporation was changed to ‘TransNamib Limited (TNL)’ with effect from 1 July 1989.”

Klaus Dierks “Namibia’s Railway System – Future Link To Africa”, Windhoek, 31 January 1997 (updated 12 December 2004), available at [www.klausdierks.com/FrontpageMain.html](http://www.klausdierks.com/FrontpageMain.html) (footnotes omitted)

The SA *Rating of Railway Property Act 25 of 1959* was applicable to SWA, but was repealed by the Municipal Amendment Act 18 of 1985 (OG 5111).

The RSA *Railways and Harbours Finances and Accounts Act 48 of 1977* was applicable to SWA, but was repealed in South Africa by the *South African Transport Services Finances and*

*Accounts Act 17 of 1983* ([RSA GG 8599](#)), which was expressly applicable to SWA (see section 16) but was repealed by the National Transport Corporation Act 21 of 1987 ([OG 5439](#)).

Railways fell under the National Transport Corporation Act 21 of 1987 ([OG 5439](#)) at independence, which was replaced after independence by the National Transport Services Holding Company Act 28 of 1998 ([GG 1961](#)). This Act, which provides for the incorporation of a holding company to undertake transport services, is listed in Namlex under TRANSPORTATION.

#### **Note**

The Liquor Act 6 of 1998 ([GG 1843](#)) states that it repeals Chapter V of the *Railways and Harbours Control and Management Consolidation Act 70 of 1957* ([SA GG 5908](#)). However, research by the authors of this index indicates that this Act was not actually in force in Namibia. Act 70 of 1957 was repealed in South Africa by the *South African Transport Services Act 65 of 1981* ([RSA GG 7786](#)), which was made expressly applicable to SWA (see section 78). (*Act 65 of 1981* was subsequently repealed in respect of South West Africa by the National Transport Corporation Act 21 of 1987 ([OG 5439](#))). Thus, it is our theory that even if the *Railways and Harbours Control and Management Consolidation Act 70 of 1957* had already been transferred to SWA in terms of a Transfer Proclamation, the repealing Act would have repealed it in respect of SWA because it was explicitly made applicable to SWA.

#### **COMMISSIONS**

Commission of Enquiry into the Activities, Management and Operations of Transnamib Holdings Limited (Proc. 3/2001, [GG 2499](#)).

See also GN 51/2001 ([GG 2499](#)).

See also laws on pensions paid to railway employees (**PENSIONS**).

See also **TRANSPORTATION**.