



Republic of Namibia
Annotated Statutes

Hazardous Substances Ordinance 14 of 1974

(OG 3415)

came into force on date of publication: 1 August 1974;
brought into force in the Eastern Caprivi by the Health Act 21 of 1988 (OG 5651)
with effect from that Act's date of publication: 30 December 1988

as amended by

Atomic Energy and Radiation Protection Act 5 of 2005 (GG 3429)
brought into force in relevant part on 18 November 2011 by GN 220/2011 (GG 4835)

ORDINANCE

To provide for the control of substances which may cause injury or ill-health to or death of human beings by reason of their toxic, corrosive, irritant, strongly sensitizing or flammable nature or the generation of pressure thereby in certain circumstances; to provide for the division of such substances into groups in relation to the degree of danger; to provide for the prohibition and control of the importation, manufacture, sale, use, operation, application, modification, disposal or dumping of such substances; and to provide for matters connected therewith.

[long title substituted by Act 5 of 2004]

(Assented to 30 July 1974)
(Afrikaans text signed by the Administrator)
(Date of commencement 1 August 1974)

[The notations in italics appear above the long title in the *Official Gazette*. They have been placed in the usual position here, for consistency with the format of other legislation.]

ARRANGEMENT OF SECTIONS

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2. Application of Ordinance in Native Areas
3. Declaration of grouped hazardous substances
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BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the State President, in so far as such consent is necessary, previously obtained and communicated to the Assembly by message from the Administrator, as follows:-

[Act 5 of 2005 makes the following substitutions throughout the Act:

- (a) "State" for "Administration";
- (b) "Permanent Secretary" for "Director";
- (c) "Minister" for "Executive Committee";
- (d) "Gazette" for "Official Gazette";
- (e) "Minister" for "Secretary"
- (f) "Commissioner for Customs and Excise" for "Secretary for Customs and Excise"; and
- (g) "Namibia" for "the Territory".

Section 26 and section 39(11) of the Namibia Revenue Agency Act 12 of 2017 both provide that a reference in any law to the Commissioner of Customs and Excise must now be construed as a reference to the Commissioner of the Revenue Agency. This presumably also applies to references to the Commissioner for Customs and Excise.]

Definitions

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

[definition of "Administration" deleted by Act 5 of 2005]

"advertisement", in relation to any grouped hazardous substance, means any written, pictorial, visual or other descriptive matter or verbal statement, communication, representation or reference -

- (a) appearing in a newspaper or other publication;

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- (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 a substance; and “advertise” has a corresponding meaning;

“analyst” means a person appointed as such under section 11(1), and a person deemed to have been appointed as such under section 11(2);

“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 grouped hazardous substance;

“describe” includes advertise or label;

[definition of “Director” deleted by Act 5 of 2005]

“dump”, in relation to a grouped hazardous substance, means deposit, discharge, spill, release or cause of permit to be deposited, discharged, spilled or released (whether or not the substance in question is enclosed in a container), in such a place, under such circumstances or for such a period that the person depositing, discharging, spilling, or releasing the substance in question or causing or permitting it to be deposited, discharged, spilled or released, may reasonably be assumed to have abandoned it; and “dumping” has a corresponding meaning;

[definition of “electronic product” deleted by Act 5 of 2005]

[definition of “electronic product radiation” deleted by Act 5 of 2005]

[definition of “Executive Committee” deleted by Act 5 of 2005]

“grouped hazardous substance” means any substance, mixture of substances, product or material declared in terms of section 3(1) to be a hazardous substance of any kind;

“Group I or Group II hazardous substance” means a substance, mixture of substances, product or material declared in terms of section 3(1) to be a Group I or Group II hazardous substance, respectively;

[definition of “Group I, Group II, Group III or Group IV hazardous substance” amended by Act 5 of 2005 to become a definition of “Group I or Group II hazardous substance”]

“import” means import into Namibia 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 grouped hazardous substance imported;

“import harbour” means a place appointed or prescribed by rule under section 6 of the Customs and Excise Act, 1964 (Act No. 91 of 1964), as a place of clearance for Namibia or as a customs and excise airport through which goods may be imported into Namibia or where they may be landed for transit or coastwise carriage;

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

“inspector” means -

- (a) a person appointed as such under section 9(1); and also
- (b) a person deemed to have been appointed as such under section 9(2); and also
- (c) a person who may in terms of section 9(4) execute or perform the powers, duties and functions of such an inspector;

“label”, when used as a noun, means any brand or mark or any written, pictorial or other descriptive matter appearing on or attached to or packed with any grouped hazardous substance or its package, and referring to such grouped hazardous substance, and, when used as a verb, means brand or mark or attach or provide in any other manner with, any written, pictorial or other descriptive matter;

“Minister” means the Minister responsible for health;

[definition of “Minister” inserted by Act 5 of 2005]

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

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

“Permanent Secretary” means the Permanent Secretary of the Ministry responsible for health;

[definition of “Permanent Secretary” inserted by Act 5 of 2005]

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

“prescribed” means prescribed by regulation;

[definition of “radioactive material” deleted by Act 5 of 2005]

“regulation” means a regulation made 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;

[definition of “Secretary” deleted by Act 5 of 2005]

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

“Territory” means the Territory of South West Africa;

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[Act 5 of 2005 amends the Ordinance to substitute “Namibia” for “the Territory” wherever the term occurs, but that substitution would produce a nonsensical result in this definition (“Territory” means Namibia of South West Africa”). The definition of “Territory” should probably be deleted.]

“this Ordinance” includes any regulation.

Application of Ordinance in Native Areas

2. This Ordinance and any amendment thereof shall also be applicable in all those areas referred to in section 2(1) of the Development of Self-government for Native Nations in South West Africa Act, 1968 (Act No. 54 of 1968) which are areas for the different native nations in Namibia and are reserved and set apart for the exclusive use of and occupation by natives, excluding the area known as Eastern Caprivi and defined in the Schedule to Government Notice No. 2429 of 1972 of the Republic of South Africa.

[According to section 1(1)(b) of the Health Act 21 of 1988 (OG 5651):

“The Hazardous Substances Ordinance, 1974 (Ordinance 14 of 1974), and the regulations promulgated thereunder, excluding any regulation that is only applicable in a specified area, shall, notwithstanding the provisions of section 2 of the said Ordinance, but subject to the provisions of this Act, be of force and effect in the Eastern Caprivi as referred to in the said section 2.”]

Declaration of grouped hazardous substances

3. (1) The Minister may, subject to the provisions of subsections (2) and (3), by notice in the *Gazette*, declare any substance or mixture of substances which, in the course of customary or reasonable handling or use, including ingestion, might, by reason of its toxic, corrosive, irritant, strongly sensitizing or flammable nature or because it generates pressure through decomposition, heat or other means, cause injury, ill-health or death to human beings, to be a Group I or a Group II hazardous substance.

[subsection (1) substituted by Act 5 of 2005]

- (2) (a) If the Minister intends to declare any substance or mixture of substances to be a Group I or Group II hazardous substance, he or she shall cause to be published in the *Gazette* a notice of his or her intention to do so and in such notice invite interested persons to submit to the Minister any comments and representations they may wish to make in connection therewith.

[paragraph (a) amended by Act 5 of 2005]

- (b) A period of not less than three months shall elapse between the publication of such a notice and any relevant declaration under subsection (1).
- (3) The provisions of subsection (2) shall not apply in respect of -
- (a) an amendment of any proposed declaration in pursuance of a notice published in terms of that subsection; and
- (b) any declaration in respect of which the Minister is of the opinion that the public interest requires that it be made without delay.

Sale of Group I, and use, operation, application and installation of Group III hazardous substances

4. (1) Subject to the provisions of subsection (2) no person shall sell any Group I hazardous substance -

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- (a) unless he or she is the holder of a licence issued to him or her in terms of section 5(a); and
- (b) otherwise than subject to the conditions prescribed or determined by the Permanent Secretary;

[subsection (1) substituted by Act 5 of 2005]

(2) If a person has in his or her possession a substance immediately before the date on which it is declared to be a Group I hazardous substance in terms of section 3, he or she may, notwithstanding the provisions of subsection (1), sell, use or apply that substance -

- (a) at any time during a period of 180 days calculated from the date on which it was so declared to be such a substance; and
- (b) if, before the expiry of the period mentioned in paragraph (a), an application was made in terms of section 5 for a licence which would authorize such sale, use, or application, at any time until such application has been finally refused in terms of this Ordinance.

[subsection (2) amended by Act 5 of 2005;
not all of the changes are indicated by amendment markings]

Licensing

5. The Permanent Secretary may, on an application in the prescribed manner and on payment of the prescribed fee (if any) and subject to the prescribed conditions and further conditions as the Permanent Secretary may in each case determine, issue to any natural person a licence to carry on business as a supplier of Group I hazardous substances.

[section 5 substituted by Act 5 of 2005]

Period of validity and renewal of licenses and registrations

6. A licence or a registration under section 5 shall be valid for the prescribed period but may on application in the prescribed manner and before the prescribed time or such later time as the Permanent Secretary may allow and on payment of the prescribed fee (if any) be renewed.

Appeals

7. (1) If the Permanent Secretary refuses an application in terms of section 5 or 6 he shall inform the applicant in writing that -

- (a) the application has been refused, giving his reasons therefor; and
- (b) he may appeal to the Minister within the prescribed period and in the prescribed manner.

(2) The Minister may allow or dismiss an appeal by virtue of the provisions of subsection (1).

Withdrawal or suspension of license

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8. Subject to Article 18 of the Namibian Constitution the Minister may at any time withdraw or suspend a licence under section 5 if any condition to which such licence is subject, has not been complied with.

[section 8 substituted by Act 5 of 2005]

Inspectors

9. (1) The Minister may appoint any person he or she may deem fit as an inspector for Group I and Group II hazardous substances, and any such inspector shall, in respect of any substance in respect of which he or she has been so appointed, and subject to the control of the Minister, be vested with the powers, duties and functions conferred or imposed on an inspector by this Ordinance.

[subsection (1) substituted by Act 5 of 2005]

(2)

[subsection (2) deleted by Act 5 of 2005]

(3) Each person appointed under subsection (1) shall be provided with a letter of authority signed by or on behalf of the Minister and certifying that such person has been appointed as an inspector in terms of this Ordinance.

[subsection (3) amended by Act 5 of 2005]

(4) The powers, duties and functions of an inspector for Group I and Group II hazardous substances may also be exercised or performed -

- (a) by an officer as defined in the Customs and Excise Act, 1998 (Act No. 20 of 1998) authorised thereto in writing by the Minister after consultation with the Minister responsible for finance; or
- (b) a member of the Namibian Police.

[subsection (4) substituted by Act 5 of 2005]

Powers of inspectors

10. (1) An inspector may at all reasonable times enter any premises on or in which any substance suspected to be a grouped hazardous substance is or is suspected to be manufactured, packed, marked, labelled, kept, stored, conveyed, sold, used, operated, applied, administered or dumped or on or in which any other operation or activity with or in connection with any such substance 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, or take and remove samples of, any substance found in or upon such premises, or any appliance or other object so found which is or is suspected to be used, or destined or to be intended for use, for, in or in connection with the manufacture, packing, marking, labelling, storage, conveyance, use, application or administration of a grouped hazardous substance, or for, in or in connection with any other operation or activity with or in connection with any grouped hazardous substance, or open any package suspected to contain a grouped hazardous substance;

[paragraph (a) amended by Act 5 of 2005]

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(b)

[paragraph (b) deleted by Act 5 of 2005]

- (c) demand any information regarding any such substance, appliance or object from any person in whose possession or charge it is or from the owner or person in charge of such premises;
- (d) count, measure, mark, seal or measure the mass of any such substance, appliance or object or its package, or lock, secure, seal or close any door or opening giving access to it;
- (e) 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 substance, appliance or object;
- (f) 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 therein;
- (g) inspect any operation or process carried out in or upon such premises in connection with any activity referred to in paragraph (a);
- (h) demand any 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 the carrying out of such operation or process;
- (i) seize any substance, appliance, book, statement or document or other object which appears to provide proof of a contravention of any provision of this Ordinance.

(2) If an inspector referred to in section 9(1) or (2) or (4) (a) or (c) intends to exercise or perform any power, duty or function under this Ordinance in the presence of any persons affected thereby, he shall first exhibit the written authority issued to him in terms of section 9(3) or (4) to any of those persons.

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

Analysts

11. (1) The Minister may in writing appoint any person it may deem fit, as an analyst in respect of Group I and Group II hazardous substances to analyse or examine samples of any substance for the purposes of this Ordinance.

(2)

[subsection (2) deleted by Act 5 of 2005]

(3) An analyst shall, for the purpose of analysing or examining any such sample or reporting the result, employ or use such methods or forms or complete such certificates or reports as may be prescribed, and shall be vested with such other powers, duties, or functions as may be prescribed.

Further analysis or examination of samples

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12. (1) If evidence of an analysis or examination of a sample by an analyst is adduced in a prosecution under this Ordinance, the court may, of its own motion or at the request of the prosecutor or, subject to the provisions of subsection (3), at the request of the accused, 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 prescribed fee.

(b) Such fee 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 fee 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 State.

Detention of imported substances

13. (1) If an inspector has taken for analysis or examination a sample of any substance imported at an import harbour, such substance and all similar substances in the same consignment may, at the discretion of the Commissioner for Customs and Excise acting in consultation with the Minister, be -

(a) detained at the import harbour until the analysis or examination has been completed; or

(b) removed from the import harbour if the importer furnishes a guarantee approved by the Minister, that he will not pledge, sell or alienate or in any manner part with, or grant any right in or over the substance 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 substance may in terms of this Ordinance not be imported, he will immediately return the whole consignment of such substance to the import harbour or to the port of shipment or place of origin, as the Minister may direct, or deal with it in such other manner as the Minister may direct.

(2) If as a result of the analysis or examination of a sample referred to in subsection (1), it appears that the substance in question may in terms of this Ordinance not be imported, the Minister may, in consultation with the Commissioner for Customs and Excise, and by order in writing direct that such substance and all similar substances 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, subject to the provisions of the Customs and Excise Act, 1964 (Act No. 91 of 1964), be imported on compliance by the importer with such conditions as the Minister may specify in such order, including any condition requiring the substitution of a label approved by the Minister for any existing label; or

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

- (d) shall be dealt with or disposed of in such other manner as the Minister may specify in such order.

Liability in regard to substance sold in a sealed package

14. (1) Any person who, according to the label of any Group I or any Group II hazardous substance, which is sold in a sealed package, imported, manufactured or packed the substance in question, shall be presumed to have imported, manufactured or packed, as the case may be, such substance unless he proves that he did not import, manufacture or pack, as the case may be, such substance.

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

Special defences

15. No person shall be convicted on a charge of selling or importing a Group I or Group II hazardous substance in contravention of any provision of this Ordinance, if he proves -

- (a) that he or his employer or principal acquired or imported the grouped hazardous substance in question under a written warranty complying with the provisions of section 16 and furnished to him or to his employer or principal; and
- (b) in the case of a sale of the grouped hazardous substance 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 in any other condition than that in which it was so acquired or imported.

Warranties

16. (1) A warranty referred to in section 15(a) shall -

- (a) not be valid unless furnished by a person resident in Namibia, and if it is furnished on behalf of a third person, unless such third person is resident or, in the case of a company, has a registered office in Namibia;
- (b) 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 (including in the case of a company, the registered office) of such third person;
- (c) guarantee that the substance to which it applies, is not a grouped hazardous substance in respect of which any prohibition in terms of the regulations applies; and
- (d) contain particulars by which any substance to which it applies can be identified and particulars of the number of packages of such substance.

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

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(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 a substance to which such warranty applies is sold or where a sample of such substance is obtained in terms of this Ordinance, shall have jurisdiction in respect of any offence committed in respect of such warranty under subsection (2).

Liability of employer or principal

17. (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 of it unless he proves -

- (a) that he did not permit or connive at such act or omission; and
- (b) that he took all reasonable measures to prevent an act or omission of the nature in question; and
- (c) that an act or omission, whether legal or illegal, of the nature in question did not under any conditions or in any circumstances fall within the course of the employment or the scope or the authority of the employee, manager or agent concerned.

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

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

Preservation of secrecy

18. (1) No person shall, except for the purposes 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 Minister, 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.

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

Offences

19. 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;

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- (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 or particulars or information which is false or misleading knowing it to be false or misleading;
- (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 substance or its package or on or over any door or opening giving access to it;
- (d) falsely represents himself to be an inspector;
- (e) retakes any sample or other substance obtained or seized under this Ordinance, or hinders or obstructs the obtaining or seizure of any such sample or other substance;
- (f) falsely in connection with any grouped hazardous substance makes use of, or applies to any such substance, any warranty, certificate, report, invoice or other document: 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 an analyst,

shall be guilty of an offence.

Penalties

20. (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 twelve months or to both such fine and such imprisonment; and
- (c) on a third or subsequent conviction, to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding twenty-four months or to both such fine and such imprisonment.

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

Jurisdiction

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

Forfeiture and disposal of goods

22. (1) The court convicting any person of an offence under this Ordinance may declare any grouped hazardous substance, appliance, product, or other object in respect of which the offence has been committed or which was used for, in or in connection with the commission of the offence, to be forfeited to the State.

(2) Anything forfeited under subsection (1) shall be disposed of in such manner as the Minister may direct.

(3) Costs incurred in respect of any action under subsection (2) may be recovered from the person convicted.

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

Time limits and other requirements in connection with prosecution

23. (1) In any criminal proceedings under this Ordinance the period between the service of the summons and the commencement of the trial shall not be less than 10 days.

(2) (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 from the date on which the sample was obtained for the purpose of such analysis or examination.

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

(3) A copy of any certificate or report by an analyst which the prosecutor intends to produce in evidence in any prosecution under this Ordinance, shall be served on the accused with the summons.

(4) If the accused has within three days after having been so served with a copy of a certificate or report, demanded in writing that the analyst who furnished the certificate or report 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 in evidence at the trial, the prosecutor shall call the said analyst as a witness at such trial.

(5) The second accused may, instead of requiring the calling of the said analyst 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 in evidence in the proceedings.

Proof and presumptions

24. 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 10(1)(e) 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;

(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) any quantity of a substance in or upon any premises at the time a sample of it is obtained by an inspector for the purpose of this Ordinance, shall, unless the

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contrary is proved, be presumed to be in the same condition or possess the same properties as such sample;

- (d) a sample of a substance 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 substance of which it is a sample;
- (e) if it is proved that any person has manufactured or imported any grouped hazardous substance, it shall be presumed, unless the contrary is proved, that he manufactured or imported it for use in Namibia;
- (f) any substance, appliance or other object found in or upon any premises where any grouped hazardous substance is manufactured, treated, packed, labelled, stored, conveyed, applied, used, operated 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, conveyance, application, use, operation or administration of such grouped hazardous substance;
- (g) any person who sells, manufactures or imports any substance which contains any grouped hazardous substance or in or on which any grouped hazardous substance is present, shall be presumed to sell, manufacture or import, as the case may be, such grouped hazardous substance.

Defects in form

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 or be a ground for exception in legal proceedings, provided the requirements for such a 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 anything done in good faith in the exercise or performance, of a power or duty conferred or imposed by or under this Ordinance.

Regulations

- 27.** (1) The Minister may make regulations -
- (a) authorizing, regulating, controlling, restricting or prohibiting the -
 - (i) manufacture;
 - (ii) modification;
 - (iii) importation;
 - (iv) storage;
 - (v) transportation; or
 - (vi) dumping or other disposal,

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of any grouped hazardous substance or class of grouped hazardous substances;

- (b) regulating, controlling, restricting or prohibiting the application of a grouped hazardous substance for any specific purpose;
- (c) prescribing the manner in which any particular grouped hazardous substance shall be described and the name under which any such substance may be sold, or prohibiting the sale of any particular grouped hazardous substance under a name other than a name so prescribed or under a specified name, or the advertisement thereof in a manner other than the manner prescribed;

(d)

[paragraph (d) deleted by Act 5 of 2005]

- (e) prescribing the precautions to be taken for the protection from injury, ill-health or death of persons in control of or employed or engaged in the manufacture, operation, application, or use of grouped hazardous substances or of any other person who is likely to or may be exposed to grouped hazardous substances as a result of the manufacture, operation, application, use, disposal or dumping thereof;
- (f) providing for the keeping of records and the submission of statistics and reports relating to -
 - (i) the manufacture, operation, application, modification, use or sale of grouped hazardous substances;
 - (ii) the premises on which grouped hazardous substances are used, sold or installed; or

(iii)

[subparagraph (iii) deleted by Act 5 of 2005]

- (g) prescribing, prohibiting, restricting or otherwise regulating -
 - (i) the packing of any Group I or any Group II hazardous substance or the packing of any such substance in a specified manner or in a manner other than a specified manner; or
 - (ii) the use for the packing of any Group I or any Group II hazardous substance, of any package of a specified condition, form or nature or made from or treated with any specified material or substance-;
- (h) exempting any Group I or any Group II hazardous substance or any such substance of a specified nature or class from the requirements of this Ordinance relating to labelling, and prescribing the conditions (if any) subject to which such exemption shall apply and the prerequisites to be observed before it shall apply;
- (i) prescribing the addition to a Group I or a Group II hazardous substance of specified additives, in order to render such substance easily distinguishable as such a substance;
- (j) prescribing the manner in which any Group I or any Group II hazardous substance or its package, or the bulk stock from which it is taken for sale, shall be labelled,

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the nature of the information to be reflected on the label, the manner or form in which such information shall be so reflected or shall be arranged on the label, or prohibiting the reflecting of information of a specified nature on the label;

- (k) prescribing the procedures to be followed, the forms to be completed and the registers to be kept in connection with the licensing of persons as suppliers of Group I hazardous substances;
- (l) prohibiting or regulating the application or other use of any Group I or any Group II hazardous substance for gain;
- (m) providing for the keeping of records relating to the application or other use of grouped hazardous substances;
- (n) providing for the notification of cases or suspected cases of poisoning, intoxication, illness or death of persons who have been exposed to grouped hazardous substances;
- (o)

[paragraph (o) deleted by Act 5 of 2005]
- (p)

[paragraph (p) deleted by Act 5 of 2005]
- (q)

[paragraph (q) deleted by Act 5 of 2005]
- (r)

[paragraph (r) deleted by Act 5 of 2005]
- (s) prescribing the duties to be performed by inspectors, including the procedures to be followed in connection with the inspection of premises, the obtaining or transmitting of samples for analysis or examination, the dealing in other respects with samples, and the records to be kept for the purposes of this Ordinance;
- (t) prescribing the duties to be performed or the powers which may be exercised by analysts, 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 certificate or report, and the records to be kept in connection therewith;
- (u) 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 Minister considers necessary or expedient to prescribe or regulate in order to attain or further the objects of the Ordinance, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(2) Regulations made under subsection (1)(t) may prescribe any method for the analysis or examination of a sample set out in any publication which in the opinion of the Minister is generally recognized as authoritative.

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(3) Different regulations may be made in respect of different types, classes or categories of grouped hazardous substances, or different classes or categories of premises, or different classes or categories of persons employed in connection with the operation of any Group I hazardous substance.

**[subsection (3) amended by Act 5 of 2005;
not all of the changes are indicated by amendment markings]**

(4)

[subsection (4) deleted by Act 5 of 2005]

(5) Any regulation may be expressed to apply only in such area as may be specified in it.

(6) A regulation may prescribe penalties for any contravention of or failure to comply with its provisions, not exceeding the penalties prescribed by section 20.

Application of Ordinance to grouped hazardous substances in transit

28. The Minister, may, at the request of the government or administration of a state or territory which is not part of Namibia, by proclamation in the *Gazette* apply any provision of this Ordinance to any grouped hazardous substance which arrives at or is imported through an import harbour or other place in Namibia and which is addressed to or intended for transmission to a place in such state or territory, and may at any time withdraw or amend such proclamation by proclamation in the *Gazette*.

Operation of Ordinance in relation to other laws

29. (1) The provisions of this Ordinance shall be in addition to and not in substitution for any other law which is not in conflict with or inconsistent with this Ordinance.

(2) A reference in this Ordinance to a provision or provisions of the Hazardous Substances Act, 1973 (Act No. 15 of 1973) and the regulations made thereunder shall, until such time as such provision or provisions come into operation, be interpreted as a reference to the corresponding provisions of section 133A of the Public Health Act, 1919 (Act No. 36 of 1919), as inserted by the Public Health Amendment Act, 1971 (Act No. 42 of 1971) and the regulations made under the said section 133A.

**[The Public Health Act 36 of 1919 was repealed
by the Public and Environmental Health Act 1 of 2015.]**

Short title

30. This Ordinance shall be called the Hazardous Substances Ordinance, 1974.

**[Section 1(1)(c) of the Health Act 21 of 1988, which brought this Ordinance into force
in the Eastern Caprivi, provides the following transitional provision:**

“Every regulation promulgated under a law referred to in paragraph (a), 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) or (b) **[which includes this Ordinance]**, and that is in force on the day preceeding **[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

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another reason, or only concerns a particular 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.”]