

ROADS AND ROAD TRANSPORTATION

Advertising on Roads and Ribbon Development Ordinance 30 of 1960.

Summary: This Ordinance regulates the display of advertisements near public roads, the erection of structures near certain proclaimed roads, access to land from such roads and drive-in cinemas.

Amendments: The Ordinance is amended by Ord. 3/1967, Ord. 11/1972 and Act 5/1982.

Regulations: The functions assigned to the Minister by this Act have been assigned to the Roads Authority established by the Roads Authority Act 17 of 1999 (GN 169/2000, GG 2374).

Road Traffic Ordinance 30 of 1967.

Summary: This Ordinance governs road traffic comprehensively. It is replaced by the Road Traffic and Transport Act 22 of 1999. However, section 113(1) of the 1999 Act states that certain provisions of the Road Traffic Ordinance 30 of 1967 remain in force insofar as they relate to public driving permits until a date specified by the Minister of Works, Transportation and Communication.

Amendments: The Ordinance is amended by Ord. 19/1968, Ord. 25/1969, Ord. 18/1970, Ord. 18/1971, Ord. 16/1972, Ord. 4/1973, Ord. 19/1973, Ord. 3/1974, Ord. 11/1974, Ord. 19/1975, Ord. 10/1976, Ord. 13/1976, Ord. 2/1978, Ord. 4/1979, Ord. 17/1980, Act 8/1981, AG 22/1983, Act 4/1983 (Rehoboth), Act 17/1985, Act 30/1985, Act 28/1986, Act 22/1987, Act 2/1988, Act 19/1988, Act 1/1994 (Walvis Bay), Act 25/1995, Act 20/1996, Act 27/1996, Act 18/1997 (which establishes a new registration and licensing system and was brought into force by GN 7/1998, GG 1781), Act 19/1997 (fees and penalties) and Act 4/1999 (alcohol breath tests and fees).

Regulations: Regulations made under this Act survive in terms of the law which replaced it, and are listed in the entry for the Road Traffic and Transport Act 22 of 1999.

Cases: Cases decided under this Act are now listed under the entry for the Road Traffic and Transport Act 22 of 1999.

Roads Ordinance 17 of 1972.

Summary: This Ordinance consolidates the laws relating to roads.

Amendments: The Ordinance is amended by-

- Ord. 16/1973
- Ord. 22/1973
- Ord. 10/1974
- Ord. 18/1975

Ord. 6/1980
Act 5/1982
AG 21/1984
Act 13/1986
Act 3/1993 (which is brought into operation by GN 42/1993 and amends section 40)
RSA *Limitation on Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970* (which repeals section 60(1))
Walvis Bay and Off-shore Islands Act 1 of 1994.

Regulations: See Schedule II of Proc. 67 of 1958, which has been amended since independence by GN 158/1994 (GG 917).

Certain functions assigned to the Minister and the Permanent Secretary by this Act have been assigned to the Roads Authority established by the Roads Authority Act 17 of 1999 (GN 171/2000, GG 2374).

Appointments: Roads Boards for areas outside local authorities are established by Proclamation 4/1995, which came into force on 1 October 1995 (GG 1063).

National Road Safety Act 9 of 1972, as amended in South Africa prior to Namibian independence.

Summary: This Act establishes the National Road Safety Council and includes provisions intended to promote road safety.

Applicability to SWA: Section 1 defines “Republic” to include “any territory in respect of which Parliament is competent to legislate”. Section 29 states “This Act and any amendment thereof shall also apply in every territory in respect of which Parliament is competent to legislate.”

Transfer of administration to SWA: The relevant transfer proclamation is the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978. However, this Act is excluded from the operation of section 3(1) of the General Proclamation by section 3(1)(f), meaning that the administration of the Act not transferred to SWA.

Road Transportation Act 74 of 1977, as amended in South Africa to March 1978.

Summary: This Act regulates certain forms of road transportation. It is replaced by the Road Traffic and Transport Act 22 of 1999. However, section 112 of the 1999 Act was not in force as of 31 October 2001, insofar as it relates to the repeal of the *Road Transportation Act 74 of 1977* and its amendments, as these laws relate to passenger transport (GN 52/2001, GG 2503).

Applicability to SWA: Section 46 states “The provisions of this Act and any amendment thereof shall apply also in the Territory, including the Eastern Caprivi Zipfel.” Section 1 defines “Administration”, “local authority”, “province”, “Republic” and “Territory” accordingly.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Transport) Transfer Proclamation (AG 14/1978), dated 15 March 1978.

Section 3(1)(i) of the transfer proclamation excluded the reference to the “Republic” in the Act from the operation of section 3(1) of the General Proclamation, meaning that “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: The Roads Transportation Proclamation (AG 31/1978) makes this Act applicable to Owamboland (where the Owambo Legislative Council had previously exercised authority over road transportation).

The Public Road Carrier Permits Proclamation (AG 55/1978) extends the validity of certain permits issued pursuant to the Act.

Act 29/1980, which is brought into operation by AG 15/1981, makes substantial amendments to the Act to abolish the power to set aside different transportation facilities for different population groups.

Act 18/1981, Act 16/1982 (which is brought into operation by AG 23/1983), and AG 33/1985 (which is brought into operation by AG 60/1989) amend the Act substantially. AG 61/1989 (which is brought into operation by AG 69/1989) also amends the Act.

Section 59 of the National Transport Corporation Act 21 of 1987 (which was repealed by the National Transport Services Holding Company Act 28 of 1998 with effect from 1 April 1999) amends section 1.

Act 8/1988 amends section 21. Act 20/1988 amends section 2 and AG 33/1985. AG 61/1989 (which is brought into operation by AG 69/1989) amends the Act substantially.

The Air Services Amendment Act 6 of 1991 amends sections 1 and 2A. Section 4 of the Cross-Border Road Transportation Act 18 of 1996 exempts cross-border road transportation covered by that Act from the provisions of this Act.

Regulations: Regulations made under this Act survive in terms of the law which replaced it, and are listed in the entry for the Road Traffic and Transport Act 22 of 1999.

Cases: Cases decided under this Act are now listed under the entry for the Road Traffic and Transport Act 22 of 1999.

Motor Vehicle Theft Act 12 of 1999.

Summary: This Act covers the theft of motor vehicles and motor vehicle parts. It came into operation on 1 April 2000 (GN 81/2000, GG 2294).

It should be noted that section 25 of the Act refers to sections 36 and 37 of the *General Law Amendment Act 62 of 1955*. However, this *General Law Amendment Act* is not applicable to Namibia. It appears that the reference should cite sections 6 and 7 of the *General Law Amendment Ordinance 12 of 1956*.

Amendments: Act 15/2004 amends sections 1, 2, 6, 8, 9, 13, 15 and 23.

Roads Contractor Company Act 14 of 1999.

Summary: This Act provides for the incorporation of a company to undertake roads construction and maintenance previously carried out by the Department of Transport. It came into force on 25 October 1999 (GN 236/1999, GG 2220), with the exception of sections 5-9 and 11, which will come into force on the date when state road construction and maintenance services are transferred to the company.

Amendments: Act 11/2002 amends sections 1 and 4, to extend the object of the company to include construction works as well as roads.

Regulations: GN 7/2002 (GG 2679) sets 1 April 2000 as the effective date of transfer of title, rights and interest in immovable property described in the Schedule to the Roads Contractor Company Ltd. GN 194/2002 (GG 2845) sets 1 April 2000 as the effective date of transfer for other listed immovable property. GN 24/2003 (GG 2922) sets 1 April 2000 as the date for the transfer of certain specified liabilities and obligations of the State to the Roads Contractor Company Ltd. GN 25/2003 (GG 2922) similarly sets 1 April 2000 as the date for the transfer of certain specified movable assets. GN 92/2004 (GG 3198) sets 1 April 2000 as the date of transfer of title, rights, and interests in immovable property to the Roads Contractor Company Ltd.

Roads Authority Act 17 of 1999.

Summary: This Act establishes a Roads Authority to manage the national road network of Namibia. It came into force on 25 October 1999 (GN 235/1999, GG 2220), with the exception of sections 15(1)(a) and 16, which came into force on 1 April 2000 (GN 90/2000, GG 2303).

Amendments: Act 20/2004 amends sections 6 and 7, which deal with the term of office of directors of the board and the minister's power to remove a director from office.

Regulations: The date set for the transfer of assets, liabilities, rights and obligations of the State to the Roads Authority in terms of section 27(1) of the Act is set as 1 April 2000 (GN 91/2000, GG 2303).

The functions given to the Minister under the Advertising on Roads and ribbon Development Ordinance 30 of 1960 are assigned to the Roads Authority by GN 169/2000 (GG 2374).

Certain functions given to the Minister and the Permanent Secretary by the Roads Ordinance 17 of 1972 are assigned to the Roads Authority by GN 171/2000 (GG 2374).

Appointments: Directors of the Board of the Roads Authority are announced in GN 76/2000 (GG 2287) and GN 97/2003 (GG 2974). Appointments to fill vacancies are announced in GN 102/2001 (GG 2544). Notification of the re-appointment of a person as a member of the board of directors is announced in 251/2003 (GG 3108).

Road Fund Administration Act 18 of 1999.

Summary: This Act establishes a Road Fund Administration to manage a road user charging system. It came into force on 25 October 1999 (GN 234/1999, GG 2220), with the exception of sections 15(1)(b) and 16, which came into force on 1 April 2000 (GN 92/2000, GG 2305).

Regulations: Registration and annual licence fees are contained in GN 94/2000 (GG 2305), which is replaced by GN 134/2000 (GG 2340), as amended by GN 91/2001 (GG 2531), GN 71/2002 (GG 2734), GN 76/2003 (GG 2946) and GN 66/2004 (GG 3181).

A levy on petrol and diesel is set forth in GN 95/2000 (GG 2305), which is replaced by GN 183/2001 (GG 2608), as amended by GN 17/2003 (GG 2909).

Entry fees for foreign vehicles are set forth in GN 263/2000 (GG 2438), as amended by GN 114/2001 (GG 2544), GN 70/2002 (GG 2734), GN 198/2002 (GG 2855), GN 90/2003 (GG 2956) and GN 65/2004 (GG 3181). The power to collect these entry fees is delegated to Africon Namibia/Architech Joint Venture in GN 264/2000 (GG 2438).

Local authorities which are eligible for funding under the Act are listed in GN 262/2000 (GN 2438).

Road Traffic and Transport Act 22 of 1999.

Summary: This Act establishes a Transportation Commission of Namibia and regulates traffic on public roads, the licensing of drivers, the registration and licensing of vehicles and cross-border road transportation. The Act came into force on 6 April 2001, with the following exceptions: Section 23 does not come into effect, and section 112 does not come into effect insofar as it relates to the repeal of the *Road Transportation Act 74 of 1977* and its amendments, as these laws relate to passenger transport (GN 52/2001, GG 2503).

The Act replaces the Road Traffic Ordinance 30 of 1967, the *Road Transportation Act 74 of 1977* and the Cross-Border Road Transportation Act 18 of 1996. However, in terms of section 113(1) of the Act, certain provisions of the Road Traffic Ordinance 30 of 1967 remain in force insofar as they relate to public driving permits until a date specified by the Minister of Works, Transportation and Communication.

The Act curiously repeals section 59 of the National Transport Corporation Act 21 of 1987 insofar as it relates to Act 44 of 1977 in the Second Schedule. However, Act 21 of 1987 was previously repealed in its entirety by the National Transport Services Holding Company Act 28 of 1998 with effect from 1 April 1999.

Appointments: Members of the Transportation Commission are announced in GN 142/2004 (GG 3237).

Regulations: In terms of section 113(3), any regulation made under any one of the pieces of legislation repealed by the Act remains in force insofar as it is not inconsistent with the Act. Regulations made under the repealed laws include the following-

Road Traffic Ordinance 30 of 1967

Regulations are contained in GN 95/1967, as amended by GN 88/1968, GN 97/1969, GN 123/1969, GN 130/1970, GN 176/1971, GN 51/1972, GN 56/1972, GN 58/1972, GN 90/1972, GN 144/1972, GN 158/1972, GN 159/1972, GN 42/1973, GN 124/1973, GN 164/1973, GN 30/1974, GN 31/1974, GN 135/1974, GN 238/1974, GN 1/1975, GN 68/1975, GN 87/1975, GN 175/1975, GN 214/1975, GN 272/1975, GN 310/1975, GN 341/1975, GN 214/1976, GN 400/1976, GN 61/1977, GN 376/1977, GN 404/1977, GN 215/1978, GN 280/1978, GN 38/1979, GN 41/1979, AG GN 131/1981, AG GN 137/1981, AG GN 141/1981, AG GN 8/1982, AG GN 9/1982, AG GN 151/1982, AG GN 152/1982, AG GN 123/1983, AG GN 133/1983, AG GN 2/1984, AG GN 56/1984, AG GN 60/1984, GN 78/1985, GN 47/1990 (GG 68), GN 95/1992 (GG 449), GN 96/1992 (GG 449), GN 48/1993 (GG 635), GN 102/1993 (GG 708), Act 1/1994, GN 190/1996 (GG 1356), GN 42/1997 (GG 1512), GN 20/1998 (GG 1801) (registration and licensing), GN 305/1998 (GG 2017), GN 2/2000 (GG 2259), GN 144/2000 (GG 2350) and GN 2/2001 (GG 2468).

Registration marks for motor vehicles are assigned in GN 57/1990, as amended by GN 229/1998 (GG 1951). Registration marks for government vehicles are assigned in GN 23/2001 (GG 2481).

Registering authorities for the District of Windhoek are appointed in GN 15/1998 (GG 1796), which amends RSA GN No. 147 of 1972, and is amended by GN 170/2000 (GG 2374) (which appoints the Roads Authority established by the Roads Authority Act 17 of 1999 as the registering authority for the District of Windhoek with effect from 1 April 2000). This is altered by GN 32/2001 (GG 2490), which repeals GN 170/2000 as well as paragraph (a)(ii) of GN 15/1998.

The Namibia Traffic Information System contemplated in section 55A(1) of the Ordinance is made applicable to the Windhoek Registering Authority Area by GN 16/1998 (GG 1796).

Registering authorities for other areas are appointed in GN 230/1998 (GG 1951), GN 75/1999 (GG 2092), GN 138/1999 (GG 2146), GN 193/1999 (GG 2192) and GN 281/1999 (GG 2248). The Namibia Traffic Information System is applied to certain areas outside Windhoek by GN 228/1998 (GG 1951), GN 76/1999 (GG 2092), GN 137/1999 (GG 2146) and GN 193/1999 (GG 2192).

Proposed regulations on the transportation of dangerous goods by road are published for comment in General Notice 17/1998 (GG 1781).

The applicability of NaTIS to motor vehicles owned by the state is addressed in GN 145/2000, GN 147/2000 and GN 148/2000 (all contained in GG 2350). The payment of fees for motor vehicles of government, regional councils and local authorities is addressed in GN 146/2000 (GG 2350).

Road Transportation Act 74 of 1977

Only post-independence regulations have been recorded in respect of this Act. AG GN 99/1989 and GN 72/1993 (GG 677) amend the pre-independence regulations promulgated under the Act. GN 90/1992 withdraws AG GN 101/1989.

Cross-Border Road Transportation Act 18 of 1996

The Southern African Customs Union Memorandum of Understanding on Road Transportation Regulations, 1998 is published in GN 33/1998 (GG 1803), and amended by GN 43/1998 (GG 1810).

A large set of proposed road traffic and transport regulations is published for comment in GN 268/2000 (GG 2441).

Extensive regulations are contained in GN 53/2001 (GG 2503). These regulations came into force on 6 April 2001, *with the following exceptions:*

- Chapter 3, Parts 3 and 5
- Chapter 4
- Chapter 5, Parts 1 and 2
- Chapter 6, Parts 2 and 4
- Regulation 235.

Part 1 of Chapter 4 and Part I of Chapter 5 came into effect on 1 November 2001 (GN222/2001, GG 2641). Chapter 4 came into force generally on 2 September 2002 (GN 161/2002, GG 2815).

The regulations are amended by GN 97/2001 (GG 2533), which substitutes Item 14, Schedule 4, by GN 103/2002 (GG 2759), which inserts regulation 383A and amends Schedule 4, and by GN 163/2002 (GG 2815), which affects numerous regulations. The regulations are further amended by GN 205-206/2004 (GG 3287).

Certain officers employed by the Roads Authority established in terms of the Roads Authority Act 17 of 1999 are authorised as road transport inspectors and traffic officers in terms of section 11(6) of the Act by GN 103/2001 (GG 2544). GN 223-224/2001 (GG 2641) withdraws the power of the Namibian Police in Keetmanshoop, Mariental, Walvis Bay, Otjiwarongo, Tsumeb and Swakopmund to test persons for driving licenses in terms of section 26(2) of the Act, as well as withdrawing their power to examine the roadworthiness of vehicles in terms of section 53(2) of the Act. GN 37/2002 (GG 2710) withdraws these powers from the Namibian Police in Gobabis. GN 5 and 7/2004 (GG 3133) withdraw the power of Namibian Police in Okahandja, Outjo and Grootfontein to test persons for driving licenses and learners' licenses in terms of section 26(2) of the Act. GN 6/2004 (GG 3133) sets 15 January 2004 as the date after which application for registration as a driving testing centre in Okahandja may be made. GN 8/2004 (GG 3133) sets 5 December 2003 as the date after which application for registration as a driving testing centre in Outjo or Grootfontein may be made.

A Bilateral Road Transport Agreement between Namibia and Zimbabwe is published in Proc. 7/2000 (GG 2359), and regulations relating to this agreement are contained in GN 156/2000 (GG 2359).

Exemptions from section 92(1)(c) and from certain regulations made in terms of the Act are contained in GN 32/2003 (GG 2925) and GN 252/2003 (GG 3108).

GN 100/2003 (GG 2978) concerns breath testing for alcohol concentrations.

Cases: The following cases concern previous legislation replaced by this Act-

Road Traffic Ordinance 30 of 1967

S v Van der Merwe 1991 NR 199 (HC) (section 146)
S v Davids 1991 NR 255 (HC) (sections 138(1) and 140(1)(a))
S v Shivute & Several Other Cases 1991 NR 433 (HC) at 440 (section 140)
S v Danoka 1992 NR 189 (HC) (section 138)
S v Moffat 1992 NR 193 (HC) (section 140)
S v Kayumba 1993 NR 354 (HC) (sections 135 and 150)
S v Amuntenya 1993 NR 417 (HC) (section 138(1))
S v Diergaardt 1993 NR 421 (HC) (sections 71 and 146)
S v Mostert 1994 NR 83 (HC)(section 140(1)(a))
S v David 1994 NR 179 (HC) (section 140(3))
S v Cloete 1994 NR 190 (HC) (section 140(1)(a))
S v Eigowab 1994 NR 192 (HC) (section 140(1)(a))
S v Mostert/S v de Koker 1995 NR 131 (HC)(sections 138(1) and 135(1)(a))
S v Muhenje 1995 NR 133 (HC) (sections 56(1) and 138(1))
S v Arebeb 1997 NR 1 (HC) (sections 56(1), 135, 138(1) and 146)
S v Joseph 1997 NR 108 (HC) (section 138(1) creating two separate offences)
S v Tjingaveta 1997 NR 197 (HC) (section 101(3))
S v Amutenya 1998 NR 204 (HC) (section 138(1))
S v Nekongo 2001 NR96 (HC) (section 138(1)(a) and 140(1)).
S. v. Gillmore 2002 NR 92 (HC) (section 138(1))
Gerson Hoveka t/a Hovy Namibia Tour and Safari v FGI Namibia 2002 NR 146 (HC).

Road Transportation Act 74 of 1977

Kersten t/a Witvlei Transport v National Transport Commission & Another 1991 NR 234 (HC)
S v Khoza 1992 NR 158 (HC).

Motor Vehicle Accidents Fund Act 4 of 2001.

Summary: This Act establishes a Motor Vehicle Accidents Fund for the payment of compensation to victims of motor vehicle accidents. It replaces the Motor Vehicle Accidents Act 30 of 1990. The Act came into force on 8 October 2001 (GN 207/2001, GG 2627).

Regulations: Regulations are contained in GN 208/2001 (GG 2627), which repeals GN 125/1991. Regulations concerning limitations on the liability of the Fund are contained in GN 5/2003 (GG 2893).

Cases: The following cases were decided under the previous Motor Vehicle Accidents Act 30 of 1990--

Van Rensberg & Another v Russer 1990 NR 45 (HC) (dealing with previous legislation)
Beukes v Mutual and Federal Insurance 1990 NR 105 (HC) (dealing with previous legislation)
Pack & Others v Mutual & Federal Insurance Company Limited 1996 NR 264 (HC).

COMMISSIONS

The appointment of a Commission of Inquiry into the activities, affairs, management and operation of the Roads Authority is announced in Proc. 21/2003 (GG 3031) and GN 172/2003 (GG 3031). An amendment of the Appointment of the Commission of Inquiry by the addition of regulation 17 was announced in Proc. 1/2004 (GG 3127). An extension of the period for submission of final report of this Commission of Inquiry is announced in GN 1/2004 (GG 3127).

INTERNATIONAL LAW

Convention on Road Traffic, 1949

succession: 13 October 1993

SACU Memorandum of Understanding on Road Transportation

accession: 2 February 1998 (Proc. 6/1998, GG 1803)

Bilateral Road Transport Agreement (Namibia and Zimbabwe)

ratification: 17 February 2000 (Proc. 7/2000, GG 2359).

See also **TRANSPORTATION**.