

CHAPTER 21:03

GOLD TRADE ACT

Acts 19/1940, 40/1952, 12/1954, 25/1956 (s. 15), 14/1962 (s. 2), 19/1963 (s. 12), 10/1964, 31/1964, 18/1965 (s. 32), 6/1967 (s. 15), 11/1968 (s. 17), 39/1973 (s. 15), 6/1978, 31/1983 (s. 11), 22/1992 (s. 8), 22/2001 (s. 4), 12/2006 (s. 45); R.G.N.s. 217/1970, 811/1972.

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AN ACT to prohibit the possession of gold by unauthorized persons and to regulate dealings in gold, and for other purposes connected with the foregoing.

[Date of commencement: 1st September, 1940.]

PART I
PRELIMINARY

1 Short title

This Act may be cited as the Gold Trade Act [*Chapter 21:03*].

2 Interpretation

In this Act—

- “deal”, in relation to gold, means buy, sell, barter, pledge, exchange, give or receive, or offer or expose for sale, barter, pledge or exchange, or have any other dealing or transaction whatever;
- “gold” means any unmanufactured gold in any form whatsoever, or any article or substance containing such unmanufactured gold, or any article consisting of or containing gold which, although manufactured, is, as such, not an article of commerce or a work of art or an article of archaeological interest, and includes gold derived from the smelting or treatment of any manufactured article containing gold;
- “holder”, in relation to a registered mining location, means the person in whose name such location is registered with the mining commissioner or with the Secretary and, in the case of a deceased person or of a company in liquidation or of any person under a legal disability, means the executor, administrator, liquidator, trustee, tutor, curator or other person who has the administration or control of the property of the person in whose name such location is registered;
- “licence” means a licence issued in terms of this Act;
- “mining location” means a mining location registered in terms of the Mines and Minerals Act [*Chapter 21:05*];
- “Minister” means the Minister of Mines or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “permit” means a permit issued in terms of this Act;
- “postal article” includes any letter, postcard, printed paper, newspaper, commercial paper, pattern, sample, parcel or other article whatsoever in the course of transmission by post; “Secretary” means the Secretary of the Ministry for which the Minister is responsible; “tributor” means the lessee or assignee of the rights of a holder.

PART II
DEALING IN AND POSSESSION OF GOLD

3 Prohibition of dealing in or possession of gold

- (1) No person shall, either as principal or agent, deal in or possess gold, unless— (a) he is the holder of a licence or permit; or
- (b) he is a holder or tributor; or
- (c) he is the holder of an authority, grant or permit issued under the Mines and Minerals Act [*Chapter 21:05*] authorizing him to work an alluvial gold deposit; or
- (d) he is the employee or agent of any of the persons mentioned in paragraphs (a), (b) and (c) and is authorized by his employer or principal to deal in or possess gold in the lawful possession of such employer or principal; and deals in or possesses gold in accordance with this Act and the licence, permit, authority or grant, if any, held by him.
- (2) In any proceedings against a person for an offence under subsection (1), the burden shall lie upon such person of proving—
- (a) that he falls within one of the exceptions provided in subsection (1); and
- (b) that he dealt in or possessed gold in accordance with this Act and the licence, permit, authority or grant, if any, held by him.
- (3) Any person who contravenes subsection (1) shall be guilty of an offence and liable—
- (a) if there are no special circumstances in the particular case, to imprisonment for a period of not less than five years or more than ten years; or
- (b) if the person convicted of the offence satisfies the court that there are special circumstances in the particular case why the penalty provided under paragraph (a) should not be imposed, which circumstances shall be recorded by the court, to imprisonment for a period not exceeding five years or a fine not exceeding level nine or twice the value of the gold that is the subject-matter of the offence, whichever is the greater, or to both such fine and such imprisonment.
- [Subsection inserted by section 45 of Act 12 of 2006]
- (4) A court sentencing a person under paragraph (a) subsection (3) shall not order that the operation of the whole or any part of the sentence be suspended.
- [Subsection inserted by section 45 of Act 12 of 2006]

4 Authorized person may only deal with authorized person

Any person authorized by this Act to deal in gold may only deal in gold with a person authorized by this Act to deal in gold, and then only to the extent to which such other person is authorized to deal in gold.

5 Miners may only deal in and possess gold won from their own locations

A holder or tributor may only deal in and possess gold which has been won by him or his employee acting on his behalf from the mining location upon which he has mining rights:

Provided that no holder or tributor may sell any such gold except to the holder of a gold dealing licence or a gold recovery works licence, unless authorized by the Minister to sell such gold to some other person.

6 Disposal of gold by persons authorized to possess gold

(1) Every holder and every tributor shall, not later than the 10th of every month, deliver to the holder of a gold dealing licence all gold won by him from his mining location during the last preceding month, except any gold for which the Minister or a mining commissioner has given him special authority to deal in otherwise or which requires treatment by the holder of a gold recovery works licence or which is to be analysed or tested by the holder of a gold assaying licence.

(2) Every holder of a gold recovery works licence shall, not later than the 10th of every month, deliver to the holder of a gold dealing licence all gold which was recovered by him during the last preceding month, except any gold for which the Minister or a mining commissioner has given him special authority to deal in otherwise.

(3) Every holder of a gold dealing licence to whom delivery of gold is tendered in terms of subsection (1) or (2) shall, without delay, take delivery of such gold and shall deal with such gold in accordance with directions issued to him by the Minister responsible for finance.

(4) Any person who contravenes subsection (1), (2) or (3) or who contravenes or fails to comply with any authority or direction issued under any of those subsections shall be guilty of an offence and liable to—

- (a) a fine not exceeding level nine or twice the value of the gold that is the subject-matter of the offence, whichever is the greater; or
- (b) imprisonment for a period not exceeding five years; or to both such fine and such imprisonment;

[Subsection substituted by section 4 of Act No. 22 of 2001]

7 Lawful possession of gold by licence and permit holders

Any holder of a licence or permit may only possess gold received by him as the result of his lawful dealing with a person authorized by this Act to deal in gold.

8 Register of transactions to be kept by licensees

(1) Every holder of a licence shall keep a register in which he shall keep a true and correct record relating to all gold deposited with or received or dispatched or otherwise disposed of by him, and shall enter or cause to be entered in such register, within twenty-four hours after every such transaction—

- (a) the date of the transaction;
- (b) the names of the parties to the transaction;
- (c) the nature and weight of the gold which was the subject of the transaction; (d) the price, if any, received or paid.

(2) A holder of a licence shall, on the written demand of any mining commissioner, inspector of mines or police officer, produce and exhibit such register to that official and, if so required, permit him to make a copy of any entry therein.

(3) If any holder of a licence is in possession of gold in excess of the amount shown to be in his possession by his register, he shall, for the purposes of section *three*, be deemed to be in unlawful possession of such excess, unless he can account satisfactorily for such possession.

9 Possession of gold not shown in register of permit holder

If the holder of a permit who is required by regulation to keep proper records of his dealings in gold is in possession of gold in excess of the amount shown to be in his possession by his records, he shall, for the purposes of section *three*, be deemed to be in unlawful possession of such excess, unless he can account satisfactorily for such possession.

10 Transmission of gold by post

(1) No person shall dispatch by post any postal article containing gold unless he is authorized to do so by any regulation.

(2) Whenever any magistrate, commissioned police officer or mining commissioner or any person authorized by the Minister in that behalf has reason or cause to believe—

- (a) that any postal article suspected to contain gold is in transit through the post and has been dispatched by a person not authorized to do so by any regulation; or
- (b) that any postal article contains gold being dealt with in contravention of this Act;

he may by written order instruct a postmaster or other postal official to detain such postal article.

(3) Such postal official shall thereupon detain and open such postal article in the presence of the officer who instructed its detention.

(4) If any such postal article is found to contain gold, it shall be dealt with in terms of section 72 of the Postal and Telecommunication Services Act [*Chapter 12:02*].

(5) If in the opinion of the Attorney-General some person has committed an offence under this Act in respect of any gold found in a postal article, and such person cannot be found or brought to trial, the Attorney-General may order that such gold shall be forfeited to the State, unless some person, other than a person liable to prosecution in respect of dealing with such gold, is able to prove a legal claim thereto within the period mentioned in subsection (3) of section *twenty-seven*.

(6) Upon the issue of such order such gold shall be sent to the Secretary, or such person as he may designate, who shall deal with it in terms of section *twenty-seven*.

11 Malicious placing of gold

If any person maliciously places any gold in the possession of or on the premises of any other person with intent that such other person shall be prosecuted or convicted under this Act, he shall be guilty of an offence.

12 Smelting of jewellery

(1) No person shall smelt or change the form of any manufactured article containing gold unless he has received the permission of the Minister to do so:

Provided that the Minister may in his discretion grant any person a general permission so to do upon such terms and conditions as he may think fit.

(2) Any person who contravenes subsection (1) or who contravenes or fails to comply with any term and condition fixed by the Minister in terms of that subsection shall be guilty of an offence and liable to a fine not exceeding level nine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection substituted by section 4 of Act No. 22 of 2001]

PART III

LICENCES AND PERMITS

13 Classification of licences

The licences which may be granted or renewed under this Act are as follows— (a)

a gold dealing licence;

(b) a gold recovery works licence; (c)

a gold assaying licence.

14 Dealings authorized by various licences

(1) The various types of licences shall authorize the following dealings in gold and no others—

(a) the holder of a gold dealing licence shall, subject to this Act, be entitled to deal in gold in any manner whatsoever;

(b) the holder of a gold recovery works licence shall be entitled to buy and receive gold which is not in the form of alluvial, amalgam, retorted, smelted or refined gold, and to sell any gold lawfully in his possession only to or through the holder of a gold dealing licence, unless authorized by the Minister to export such gold;

(c) the holder of a gold assaying licence shall be entitled to receive gold for the purpose of analysis or testing thereof, and to sell any gold resulting from his operations only to the holder of a gold dealing licence.

(2) Nothing in subsection (1) contained shall be deemed to fetter in any way the power of the Minister responsible for finance or the Minister, as the case may be, to impose conditions upon the issue of any licence.

15 Form of licences

Licences issued under this Act shall be in the prescribed form.

16 Authority for issue of licences

No licence shall be issued to any person except upon the written authority of the Minister or the Minister responsible for finance, as the case may be, who may, without assigning any reason, refuse to grant authority for the issue of such licence or impose such conditions upon the issue of such licence as he may think fit.

17 Issuer of licences

(1) The Secretary, or any person authorized by him in that behalf, shall issue all licences, other than gold dealing licences, upon the written authority of the Minister.

(2) The Secretary of the Ministry responsible for finance, or any person authorized by him in that behalf, shall issue gold dealing licences upon the written authority of the Minister responsible for finance.

18 Date of expiry of licences

Unless previously cancelled in terms of section *twenty-one*, every licence which—

(a) is issued shall expire on the 31st December next succeeding the date of issue:

Provided that, if such licence is issued on or after the 1st December in any year, it shall expire on the 31st December of the next following year;

(b) is renewed shall expire on the 31st December of the year for which it is renewed.

19 Licences fees

There shall be paid for the issue or renewal of a licence such fee as the Minister may fix by notice in a statutory instrument.

20 Permits to deal in or possess gold

(1) Any mining commissioner may, subject to such conditions as he may think fit to impose, issue to any person a permit authorizing such person to acquire or to be in possession or to dispose of gold in a quantity not exceeding one ounce.

(2) The Minister may, subject to such conditions as he may think fit to impose, issue to any person a permit authorizing such person to acquire or to be in possession or to dispose of such quantity of gold as may be specified in such permit.

21 Cancellation of licences

The President may, upon the conviction of the holder of any licence for an offence under this Act, or on the breach of any condition of the licence or for other good and sufficient reason, at any time cancel any such licence, whereupon the holder thereof shall be deemed to be unlicensed.

22 Revocation of permits

The Minister may, upon the conviction of the holder of any permit for an offence under this Act, or on the breach of any condition of the permit or for other good and sufficient reason, at any time revoke any such permit, whereupon the holder thereof shall be deemed to be no longer the holder of a permit.

PART IV

GENERAL

23 Disabilities entailed by a trader on conviction

(1) If a person who is the holder of any licence to carry on any trade, business or occupation under any enactment other than this Act is convicted of any offence under this Act, the conviction shall have the effect of cancelling such licence, unless the convicting court for any reason (which it shall record) thinks fit to order otherwise.

(2) Any person convicted as aforesaid shall not, during the period of five years from the date of his conviction, be entitled to obtain any such licence as aforesaid authorizing him to carry on any trade, business or occupation upon a mining location or within a distance of ten kilometres therefrom and, if any such licence is issued to him during the said period, it shall be void.

24 Person convicted may not enter mining location

If any person is convicted of an offence in terms of section *three, ten, eleven, twelve or twenty-six*, the conviction shall have the effect of prohibiting such person from entering or being upon any precious metals mining location during the period of five years from the date of his conviction unless the court for any reason (which it shall record) thinks fit to order otherwise, and any such person who fails to comply with a prohibition under this section shall be guilty of an offence:

Provided that nothing in this section contained shall be deemed to prohibit any such person from passing through a precious metals mining location upon a road to which the public have a right of access.

25 Production of licences and permits

(1) Any holder of a licence or permit issued under this Act shall at all times on demand produce and show his licence or permit to any police officer.

(2) If the holder of a licence or permit issued under this Act— (a) fails to comply with a demand in terms of subsection (1); or

(b) refuses to allow a police officer to read the licence or permit and take a copy thereof; he shall be guilty of an offence.

26 False statements

If any person makes any statement which he knows to be false for the purpose of procuring, whether for himself or any other person, the grant of a licence or permit, he shall be guilty of an offence.

27 Procedure on confiscation of gold

(1) If in terms of this Act any court declares any gold to be forfeited to the State, such court shall cause such gold to be delivered to the Secretary, or such person as he may designate.

(2) The Secretary shall publish a notice in the *Gazette*, which shall state that the gold so confiscated is in the possession of the Ministry of Mines.

(3) At any time within two months of the date of publication of such notice any person claiming a legal right to such gold may apply to the Secretary for the delivery to him of such gold and the Secretary, if satisfied as to the legality of such claim, shall deliver the gold to such person.

(4) If the Secretary declines to recognize such claim, the applicant may, within twenty-one days thereof, apply to the High Court for such delivery and the High Court may on such application make such order as it may deem just.

(5) Any expense incurred by the Ministry of Mines in connection with the retention and custody of such gold shall be paid to the Ministry of Mines by the person, if any, to whom such gold is delivered.

(6) If on the expiration of the said period of two months no person has established a legal right to the said gold, the Secretary may dispose of such gold in such manner as the Minister may direct and may authorize in writing any person to sell such gold.

(7) Any person duly authorized to sell such gold shall not be liable in respect of such sale to any prosecution under this Act.

28 Gold, ownership of which is unknown

If a police officer or any other person delivers to the Secretary gold, the lawful owner or holder of which is not known the gold shall be deemed to be forfeited to the State and the Secretary shall deal with it in terms of section *twenty-seven*.

29 Powers of entry and search by police

Any police officer may without warrant at any time by day or by night—

- (a) enter in and upon and search any buildings, premises, railway trains, vehicles or boats, or any other place where he may have reasonable cause for suspecting that any gold is unlawfully concealed; and
- (b) search any person then being upon such building, premises, railway train, vehicle, boat or other place, whom he may on reasonable grounds suspect of having upon his person or in his possession any gold in contravention of this Act:

Provided that a female shall not be searched otherwise than by a female; and (c) seize any such gold and take it before a magistrate to be dealt with according to law.

30 Offences and penalties

(1) If any person contravenes section *four, five, seven* or *eight* he or she shall be guilty of an offence and liable—

- (a) if there are no special circumstances in the particular case, to imprisonment for a period of not less than five years or more than ten years; or
- (b) if the person convicted of the offence satisfies the court that there are special circumstances in the particular case why the penalty provided under paragraph (a) should not be imposed which circumstances shall be recorded by the court, to imprisonment for a period not exceeding five years or a fine not exceeding level nine or twice the value of the gold that is the subject-matter of the offence, whichever is the greater, or to both such fine and such imprisonment.

(2) A court sentencing a person under paragraph (a) of subsection (1) shall not order that the operation of the whole or any part of the sentence be suspended.

(3) Any person who is guilty of an offence in terms of this Act other than an offence referred to in subsection (1) or section *three, six* or *twelve* shall be liable to a fine not exceeding level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) On the conviction of any person for an offence under this Act the court shall order that any gold which is the subject of such offence shall be forfeited to the State unless some person, other than the person convicted, establishes a legal claim thereto within the period mentioned in subsection (3) of section *twenty-seven*.

(5) The court which has convicted any holder of a licence or permit of an offence under this Act shall cause notification of such conviction to be sent to the Minister.

[Section substituted by Act 12 of 2006]

31 Regulations

(1) The Minister may make regulations for the better carrying out of the objects and purposes of this Act.

(2) Regulations may—

- (a) prescribe the form of licences and permits;
- (b) prescribe the form of the register to be kept in terms of section *eight* and provide for any additional particulars which shall be entered or caused to be entered in such register;
- (c) prescribe what persons may dispatch gold through the post, and define the conditions to be followed before such gold may be accepted at a post office for transmission by post;
- (d) prescribe the days and hours during which it shall be unlawful to deal in gold;
- (e) provide for the better prevention of theft, unlawful dealing in or unlawful possession of gold;
- (f) require such holders of permits as may be prescribed to keep proper records of their dealings in gold;
- (g) provide for the control of any business wherein gold is manufactured, and authorize the search by a police officer without warrant at any time by day or by night of any premises where such business is carried on;
- (h) provide for the hall-marking of articles made up or manufactured in Zimbabwe from gold.