



ANALYSIS

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1988, No. 8

An Act to consolidate and amend the law relating to liquor licences. (26 June 1988)

Price .80c

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:

1. Short Title and commencement - (1) This Act may be cited as the Liquor Licensing Act 1988.

(2) This Act shall come into force on a date to be appointed by the Queen's Representative by Order in Executive Council.

2. Interpretation - In this Act unless the context otherwise requires,-

"Authority" and "Liquor Licensing Authority" mean the Liquor Licensing Authority established by this Act;

"Licence" means any licence issued under this Act;

"Licensee" or "Licensed Person" means a person holding a licence for the time being in force under this Act;

"Liquor" means any spirits wine ale beer porter stout cider or perry or any other fermented distilled or spirituous liquor which on analysis is found to contain more than 2 parts percent of proof spirit.

"Minister" means the Prime Minister or such other Minister as the Prime Minister may from time to time charge with the responsibility for this Act pursuant to Article 16 of the Constitution;

"Minor" means a person under the age of 18 years;

"Premises" means any building and includes every cellar yard garage shed or other place belonging or in any way appertaining to any such building;

"Public Notice" means 7 clear days notice published in a newspaper circulating in the locality to which the act matter or thing required to be publicly notified relates or refers or in which it arises, or in the case where public notice is required to be given in any island other than Rarotonga, 7 clear days notice given by notice affixed in such public place or places on that island as the Chief Administration Officer of that island directs.

3. Application of Act - (1) Except as expressly provided in this Act or in any other enactment (whether passed before or after the commencement of this Act), this Act shall apply to all sales of liquor in the Cook Islands.

(2) Nothing in this Act shall apply,-

(a) To any person who supplies, keeps for sale, or sells any spirituous or distilled perfume bona fide as perfumery;

(b) To any pharmaceutical chemist who supplies keeps for sale or sells any liquor bona fide for purposes other than human consumption.

PART I
ADMINISTRATION

4. Liquor Licensing Authority - (1) There is hereby established an Authority to be called the Liquor Licensing Authority.

(2) The membership of the Authority shall consist of,-

- (a) A Chairman and Deputy Chairman, each of whom shall be appointed by the Minister;
- (b) Two members appointed by the Minister upon the recommendation of the Religious Advisory Council;
- (c) Three members appointed by the Minister upon the recommendation of the Aronga Mana of Rarotonga;
- (d) One member appointed by the Minister upon the recommendation of the Cook Islands Chamber of Commerce Incorporated;
- (e) One member appointed by the Minister upon the recommendation of the Cook Islands Tourist Authority.
- (f) One member appointed by the Minister of Health;
- (g) One member appointed by the Minister of Police;
- (h) One member appointed by the Minister of Corrective Services.
- (i) Two members appointed by the Minister.

(3) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1975 by reason of his being a member of the Authority.

5. Term of office of members of Authority - (1) Except as otherwise provided in this Act, every member of the Authority shall hold office for a term of two years but may from time to time be reappointed.

(2) Notwithstanding the provisions of subsection (1), every member of the Authority shall, unless he sooner vacates his office pursuant to section 6 continue to hold office until his successor comes into office.

6. Resignation or removal from office - (1) Any member of the Authority may resign his office at any time by giving written notice to the Minister.

(2) Any member of the Authority may be removed from office at any time by the Minister for disability, inability, neglect of duty or misconduct proved to the satisfaction of the Minister.

7. Remuneration and expenses - There shall be paid to the members of the Authority out of money appropriated by Parliament for the purpose, such remuneration and expenses as may from time to time be fixed by the Queen's Representative by Order in Executive Council.

8. Functions of the Authority - (1) The principal functions of the Authority shall be,-

- (a) To hold such inquiries and gather such information as will enable it to determine the requirements of the public as to -

- (i) the provision of liquor licences generally;
- (ii) the types of liquor licences;
- (iii) licensing hours and days, and to report to Government on such matters.
- (b) To hear and determine applications for liquor licences, and renewals and variations of such licences.
- (c) To grant or refuse such applications, or to grant applications subject to conditions.
- (d) To suspend or cancel licences subject to the provisions of this Act.
- (e) To conduct inquiries into any matters consistent with the objectives of this Act as may be directed by the Minister.
- (f) Such other functions as may be conferred upon it by this or any other enactment.

9. Authority deemed to be Commission of Inquiry - (1) The Authority shall, within the scope of its jurisdiction, be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1966 and, subject to the provisions of this Act and any regulations made under this Act, the provisions of that Act shall apply accordingly.

(2) For the purposes of this section, the power to issue summonses requiring the attendance of witnesses before the Authority or the production of documents, or to do any other act preliminary or incidental to the hearing of any matter by the Authority, may be exercised by the Chairman or by the Secretary purporting to act by direction or with the authority of the Chairman.

10. Secretary to the Authority - (1) There shall be appointed by the Public Service Commissioner an employee of the Public Service to be Secretary to the Authority.

(2) The Secretary shall be responsible for,-

- (a) Keeping records of all proceedings of the Authority,
- (b) Keeping records of all licences issued by the Authority.
- (c) Such other matters as the Authority may direct.

11. Meetings of Authority - (1) The first meeting of the Authority shall be held on a date to be fixed by the Chairman, being in any event a date not more than 1 month from the coming into force of this Act.

(2) Subsequent meetings shall be held at such times and places as the members may appoint.

(3) The Minister, the Chairman, or any 3 members may at any time convene a special meeting of the Authority.

12. Proceedings of Authority - (1) Whenever the Authority meets for the purpose of hearing any application which it is authorised by this Act to hear, the meeting shall, subject to the provisions of subsection (3) and (4), be held in public after public notice of such meeting has been given.

(2) Any other meeting or inquiry of the Authority may, in the discretion of the Authority be held in public after public notice of such hearing has first been given, or in private.

(3) Whenever the Authority holds a public sitting it may in its discretion hold any part of the sitting in private if, having regard to the interests of persons appearing and being heard and to the public interest, it thinks it proper to do so.

(4) The Authority may in any case deliberate in private as to its decision on any matter or as to any question arising in the course of any proceedings.

(5) The Authority may make an order prohibiting the publication of any report or description of any part of the proceedings in any matter before it; but no such order shall be made prohibiting the publication of the names and descriptions of the parties to the matter, or of particulars of any premises affected.

(6) Any decision, order, direction, certificate, or other document issued by the Authority be signed on its behalf by the Chairman, or by the Secretary of the Authority.

(7) Subject to the provisions of this Act and of any regulations made under this Act, the Authority may regulate its procedure in such manner as it thinks fit.

(8) Every member shall be entitled to vote at meetings of the Authority, and the Chairman shall have a casting as well as a deliberative vote.

(9) Nine members of the Authority shall constitute a quorum.

13. Evidence in proceedings before the Authority - (1) The Authority may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectually with any matter before it, whether or not the statement, document, or matter would be admissible in a Court of law.

(2) Subject to the foregoing provisions of this section, the Evidence Act 1968 shall apply to the Authority and to the members thereof, and to all proceedings therein, in the same manner as if the Authority or Committee were a Court within the meaning of that Act.

14. Representation of parties - Where under this Act any person is entitled to appear and be heard in relation to any matter in any proceedings before the Authority, that person may appear in person or by his counsel, solicitor, or agent, and shall have the right to produce evidence and to cross-examine witnesses.

15. Right of certain persons to appear before Authority - In any proceedings before the Authority, the following persons may appear and be heard,-

- (a) Any member of the Police.
- (b) Any Medical Officer of Health, or Public Health Inspector.
- (c) Any member of the Religious Advisory Council.

- (d) Any member of the Aronga Mana for the locality in which the act, matter or thing which is the subject matter of the proceedings is situated.
- (e) A representative of the Cook Islands Tourist Authority.
- (f) A representative of the Cook Islands Chamber of Commerce Incorporated.
- (g) Any other person who satisfies the Authority that he has an interest in the proceedings, apart from any interest in common with the public.

16. Hearings of the Authority on any Island other than Rarotonga - (1) Notwithstanding any other provision of this Act, where it is necessary for the Authority to hear any matter on any Island other than Rarotonga it shall be sufficient for three members of the Authority together with not less than 3 of the persons named in subsection (2) to hear and determine the matter.

(2) When sitting on an island other than Rarotonga, the Mayor, Deputy Mayor, Chief Administration Officer, a representative of the Religious Advisory Council for that island, and a member of the Aronga Mana of that island, shall be deemed to be members of the Authority and shall have the right to have a deliberative vote.

(3) The Chairman shall nominate one of the three members of the Authority, if he or the Deputy Chairman is not present, to be Chairman and in the case of an equality of votes that person shall have a casting as well as a deliberative vote.

(4) Any decision made at any hearing under this section shall be deemed to be a decision of the Authority.

(5) All hearings held on any Island other than Rarotonga shall be publicly notified by the Chief Administration Officer 7 days before the hearing.

17. Hearings may be held by other means - (1) Notwithstanding any other provision of this Act, where in the opinion of the Authority it is not possible to hear any application promptly due to transportation difficulties, and the application is from a person on an island within the Northern islands of the Cook Islands, then the Authority may make arrangements for such application to be heard by radio-telephone, telex, telegram, or by mail.

(2) Notwithstanding any other provision of this Act, where application is made for a licence which is temporary in nature, and the period for which such licence is sought does not exceed 48 hours, such application may be dealt by the Chairman of the Authority or such other person as shall for the time being be acting in his stead and the provisions of sections 12 and 15 shall not apply. Any decision made pursuant to this subsection shall be deemed to be a decision of the Authority.

18. Annual Report - (1) Within 3 months of the end of every financial year, there shall be prepared by the Authority and forwarded to the Minister a report of its proceedings during that year.

(2) A copy of such report shall be laid before Parliament within 14 days of its receipt by the Minister if Parliament is then in Session, and if Parliament is not then in Session, then within 14 days after the commencement of the next ensuing Session.

PART II LICENCES

19. Kinds of Licence - (1) There may be granted pursuant to this Act such kinds of licences as may from time to time be prescribed.

(2) Without limiting the generality of subsection (1), such kinds of licence may include,-

- (a) Hotel premises licences.
- (b) Motel premises licences.
- (c) Club premises licences.
- (d) Wholesale premises licences.
- (e) Retail premises licences.
- (f) Special licences
- (g) Extended hours licences.

20. Conditions of Licences - Subject to the provisions of this Act and of any regulations made hereunder, licences and renewal of licences granted pursuant to this Act may be granted subject to such terms and conditions as the Authority thinks fit.

PART III OFFENCES

21. Offences by licensees - (1) Every licensee who shall sell or expose for sale any liquor at any place or time or in any quantity or manner not authorised by his licence or by the provisions of this Act shall be guilty of an offence.

(2) Every licensee commits an offence, who,-

- (a) Sells or supplies or allows to be sold or supplied any liquor to any minor.
- (b) Permits drunkenness or violent, quarrelsome, disorderly or riotous conduct to take place on his licensed premises or sells any liquor to any drunken person; or
- (c) Permits any disorderly or drunken persons to assemble or remain on his licensed premises.
- (d) Sells liquor to any person in respect of whom a prohibition order made pursuant to section 26 of this Act is in force.

(3) Every licensee shall be responsible for the acts or omissions of his servants or agents in contravention of this Act, notwithstanding that it shall appear that the offence charged was not committed by such licensee personally but by his servant or agent.

22. Offence to sell liquor without authority - Every person, not being licensed or authorised under or by virtue of this Act or any other Act to sell liquor, who sells or offers or exposes or keeps for sale any liquor, commits an offence.

23. Offences by minors - Every minor commits an offence who consumes liquor in any hotel, club or place of resort open to or used by the public or has possession of any liquor therein.

24. Offences by other persons - Any person (who is not a licensee) who supplies with liquor, or incites to consume any liquor, -

- (a) Any person who is a minor; or
- (b) Any person in respect of whom a prohibition order is in force pursuant to section 25,

commits an offence.

25. Offence to drink liquor in public thoroughfares - Every person commits an offence who drinks any liquor on any road, street, footpath, alley or any thoroughfare of a public nature, or in any licensed public vehicle or passenger carrying vessel, or any public place or premises that is not licensed pursuant to the provisions of this Act.

26. Prohibition orders - (1) Upon the application of any person or any relative of any such person, or of the Police, and upon proof that such person is of confirmed intemperate habits, the High Court may make a prohibition order in respect of such person, prohibiting him from purchasing, procuring, processing or drinking any liquor for such period, or for life as the High Court shall determine.

(2) Every person in respect of whom a prohibition order is in force pursuant to subsection (1) who purchases, procures, possesses or consumes liquor during the currency of a prohibition order commits an offence.

(3) Every person commits an offence who knowingly procures any liquor for a person in respect of whom a prohibition order is in force, or assists such person to procure or consume liquor.

(4) A prohibition order may at any time, (being a time not less than one year after the date of the making of such order), be rescinded by the High Court upon the Court being satisfied that the person has in all respects complied with the prohibition order during the 12 months period immediately preceding the date such matter is heard by the Court, and appears unlikely to previous intemperate habits.

(5) In every case where the High Court makes a prohibition order, the Registrar of the High Court shall cause public notice of such order and the terms thereof to be given by publication in a daily newspaper circulated throughout the Cook Islands.

27. Penalties - (1) Where an offender is a licensee, the Court may, upon conviction, -

- (a) Impose a fine not exceeding \$1,000.
- (b) Recommend to the Authority that his licence be suspended.
- (c) Recommend to the Authority that his licence be cancelled.

(2) Where an offender is a person other than a licensee, the Court may, upon conviction, -

- (a) Notwithstanding the provisions of section 8 of the Criminal Justice Act 1976, make a community service order pursuant to the provisions of that Act.
- (b) Make an order pursuant to section 26.

- (c) Where the circumstances are such that the Court is of the opinion that orders pursuant to paragraphs (a) or (b) are not appropriate, impose a fine not exceeding \$200 for a first offence, or \$500 for a second or subsequent offence.

(3) On the conviction of any person for an offence against this Act, the Court in addition to any other penalty imposed or order made by it, may declare any liquor which has been seized by the Police pursuant to paragraph (c) of section 29 of this Act and in respect of which such person is convicted together with the container of such liquor, to be forfeited to the Crown to be sold, destroyed, or otherwise disposed of as the Minister thinks fit; and -

28. Commencement of proceedings - All proceedings for offences against this Act shall be commenced within a period of 6 months after the commission of the offence charged.

29. Powers of Police officers - Any Police officer may at any time, -

- (a) Enter on and inspect any licensed premises or any part thereof;
- (b) Demand the name, address and age of any person in any licensed premises or public place;
- (c) On suspecting for reasonable grounds that an offence against this Act has been committed at or in any place, to enter on such place without warrant and to seize any liquor the possession of which is not satisfactorily accounted for by any owners or occupants of such place, such liquor to be held in safe custody pending an order being made pursuant to section 27(3) in relation thereto.

30. Regulations - (1) The Queen's Representative, acting on the advice of the Executive Council, may from time to time make all such regulations as shall be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power conferred by subsection (1), regulations may be made for all or any of the following purposes, -

- (a) Prescribing procedures and forms in respect of the application for and issue of licences, and renewals of licences.
- (b) Providing for the keeping of records for the purposes of this Act.
- (c) Prescribing forms of applications, licences, and other documents made or issued under or for the purposes of this Act;
- (d) Prescribing minimum standards with respect to the location, size and nature of premises to qualify for the issue of licences under this Act.

- (e) Prescribing the hours and days during and on which liquor may be sold. Such regulations may prescribe different hours and days for different kinds of licence.
- (f) Prescribing the kinds of licence that may be granted by the Authority.
- (g) Prescribing the terms and conditions subject to which, and the period for which, licences may be issued, either generally or in respect of a specified class of licence.
- (h) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (i) Prescribing offences against any such regulations and prescribing fines not exceeding \$200 in respect of any such offences.
- (j) Prescribing fees for applications received and for licences granted.

31. Cancellation or suspension of licences - (1) Any member of the Police may at any time apply in the prescribed form to the Authority for the cancellation or suspension of any licence on any one or more of the following grounds,-

- (a) That the licensee has failed to conduct the licensed premises in a proper manner, or has allowed the premises to be frequented by disorderly or disreputable persons; or
- (b) That drunkenness or riotous or disorderly conduct is allowed on the licensed premises; or
- (c) That there has been committed a breach of or has failed to fulfill any condition of the licence; or
- (d) That the licensee has committed a breach of or has failed to fulfill his responsibilities under any of the provisions of this Act, or any other Act or any regulations thereunder; or
- (e) The High Court has made a recommendation for cancellation or suspension pursuant to section 27(1).

(2) If, on an application made to it under subsection (1), the Authority is satisfied that the complaint is well-founded, it shall make an order either,-

- (a) Cancelling the licence; or
- (b) Suspending the licence for such period not exceeding 12 months as it thinks fit -

unless it is satisfied, having regard to the matters referred to in subsection (4), that there are good and sufficient reasons why it should not make such an order.

(3) Notwithstanding subsection (2), in any case where the proceedings relate to the conduct or state of, or to any acts or omissions in respect of particular premises (where the licence relates to more than one premises), the Authority may if it thinks fit cancel or suspend the licence in respect of the particular premises only.

(4) In any proceedings under this section, the Authority shall have regard to the character and conduct of the licensee, the extent to which the licensee was personally responsible for any act or omission, and all the circumstances of the case.

(5) On the lodging of any application under this section, the Chairman shall appoint a time and place for the hearing of the case.

(6) The applicant shall serve on the licensee not less than 10 clear days notice in the prescribed form calling upon him to appear before the Authority at the time and place so appointed to show cause why his licence should not be cancelled or suspended, on the ground or on any of the grounds specified in the notice.

PART IV APPEALS

32. Appeals - (1) Where, -

(a) Any licence is suspended or cancelled by the Authority; or
(b) Any application for renewal of a licence is refused; or
(c) Any licensee is dissatisfied with a decision of the Authority made pursuant to section 34(2), the holder of that licence, or the applicant for such renewal (as the case may be) may within 21 days appeal to the High Court against such suspension, cancellation or refusal.

(2) Notwithstanding anything in this section, a Judge of the High Court on the application of any person having a right of appeal under this section, may grant leave to extend the time limit prescribed by this section to such time as the Judge thinks fit, where in the opinion of the Judge there was reasonable cause for the failure or inability of that person to give notice within the time prescribed by this section.

(3) The notice of appeal shall be in writing and shall be filed in the office of the High Court at Avarua, Rarotonga. Immediately after the filing of the notice of appeal, a copy of the notice shall be delivered or sent by the appellant to the Secretary of the Authority.

(4) The operation of the decision appealed against shall be suspended until the final determination of the appeal. In the case of the cancellation or suspension of a licence, the licence shall, if the appeal is not finally determined on or before the expiry of the licence by effluxion of time, be deemed to be extended until the final determination of the appeal and, where necessary, the provisions of this Act relating to the renewal of such licence, with the necessary modifications, shall apply with respect to the licence.

(5) On hearing the appeal the High Court may confirm, modify, or reverse the decision appealed against. The decision of the Court shall be final and binding on all parties.

33. Procedure on appeal - (1) As soon as possible after the receipt by the Secretary of the Authority of a copy of any notice of appeal under section 32 of this Act, the Secretary shall send to the office of the High Court at Rarotonga, -

- (a) Any application and supporting documents filed with the Authority and any written submissions, statements, reports, or other papers, relating to the decision appealed against;
- (b) A copy of any notes made by the Authority of the evidence given at the hearing (if any) before the Authority.
- (c) Any exhibits in the custody of the Authority.
- (d) A copy of the decision or order appealed against.

(2) The Authority may also, if it thinks fit, and shall if the Court so directs, file in the office of the High Court a report setting out the considerations to which it had regard in coming to its decision, including any material indicating the effect that the decision might have on the general administration of this Act, and any other matters relevant to the decision or to the general administration of the Act to which it wishes to draw the attention of the Court.

(3) Where any report is filed pursuant to subsection (2), the Court may direct that a further report be filed by the Authority.

(4) A copy of every report filed pursuant to subsection (2) or subsection (3), shall be given or sent forthwith to every party to the appeal, and any such party shall be entitled to be heard and to tender evidence on any matter referred to in the report.

(5) Every appeal shall be by way of rehearing, but where any question of fact is involved in any appeal, the evidence taken before the Authority bearing on the question shall, subject to any special order, be brought before the High Court as follows:-

- (a) As to any evidence given orally, by the production of a copy of the Authority's note, or of a written statement read by a witness while under oath, or of such other materials as the High Court may deem expedient;
- (b) As to any evidence taken by affidavit and as to any exhibits, by the production of the affidavits and such of the exhibits as may have been forwarded to the Court by the Authority, and by the production by the parties to the appeal of such exhibits as are in their custody;

Provided that the High Court may in its discretion rehear the whole or any part of the evidence, and shall rehear the evidence of any witness if the Court has reason to believe that any note of the evidence of that witness made by the Authority is or may be incomplete in any material particular.

(6) The Court shall have full discretionary power to hear and receive further evidence on questions of fact, either by oral evidence or by affidavit.

(7) The Court shall also have regard to any report filed by the Authority pursuant to subsection (2) or subsection (3), and to any matters which would be otherwise admissible in evidence in a Court of law.

(8) If the appellant does not appear at the time appointed for hearing the appeal may be dismissed.

(9) If the appellant does not prosecute his appeal with due diligence, the Authority may apply to the High Court for the dismissal of the appeal.

(10) The Registrar of the High Court shall transmit to the Secretary of the Authority a memorandum of the decision of the Court, and such proceedings shall be had thereon as if the decision had been given by the Authority.

(11) The Registrar shall also return to the Secretary of the Authority any application, papers, and exhibits forwarded by the Secretary pursuant to subsection (1) of this section.

PART V MISCELLANEOUS

34. Existing licences - (1) Notwithstanding anything in this Act, where at the passing of this Act any person is a holder of a licence issued pursuant to the provisions of the Liquor Control Ordinance 1963 in respect of any premises or part of any premises, such licence shall be deemed to have been lawfully issued pursuant to this Act in respect of such premises and shall, subject to the provisions of subsection (2), continue in force according to its tenor.

(2) The Authority shall, within 6 months of the date of the coming into force of this Act, re-classify every licence issued pursuant to the Liquor Control Ordinance 1963 into a class of licence created pursuant to this Act which as near as can be, reflects the conditions of that licence applying before the coming into force of this Act. The Authority shall notify the licensee in writing on such re-classification in the terms then applicable to his licence.

35. Repeals - (1) The enactments specified in Part I of the schedule are repealed.

(2) The enactments specified in the first column of Part 2 of the schedule are amended in the manner set out in the second column.

SCHEDULE

Sec.35(1)

PART I

Liquor Control Ordinance 1963
Cook Islands Amendment Act 1970 No.2

Sec.35(2)

PART 2

First Column

Second Column

Cook Islands Amendment
Act 1961

By repealing sections 3, 4,
and 9.

Liquor Control Amendment
1981 No.3

By repealing sections 2, 3,
4 and 5.

This Act is administered by
the Liquor Licensing Authority.