



ANALYSIS

<p>Title</p> <p>1. Short Title</p> <p style="text-align: center;">PART I</p> <p style="text-align: center;">INTOXICATING LIQUOR</p> <p>2. Commencement</p> <p>3. Interpretation</p> <p>4. Liquor control authority</p> <p>5. Manufacture of intoxicating liquor prohibited</p> <p>6. Importation of intoxicating liquor</p> <p>7. Resident Commissioner may import intoxicating liquor</p> <p>8. Offences as to intoxicating liquor illegally manufactured or imported</p> <p>9. Sale of intoxicating liquor</p> <p>10. Restrictions on giving intoxicating liquor to other persons</p>	<p>11. Arrest of persons suspected of having illegally dealt with intoxicating liquor</p> <p>12. Seizure and forfeiture of intoxicating liquor</p> <p>13. Search warrant</p> <p>14. Persons found on premises deemed illegally dealing in intoxicating liquor</p> <p>15. Names of persons found on premises searched may be demanded</p> <p>16. Repeals and revocation</p> <p>17. Reserved enactment.</p> <p style="text-align: center;">PART II</p> <p style="text-align: center;">MISCELLANEOUS AMENDMENTS</p> <p>18. Execution of renewals of leases</p> <p>19. Pardon and remission of sentence</p> <p>20. Execution of instrument by attorney</p>
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1961, No. 15

An Act to amend the Cook Islands Act 1915

[18 October 1961]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Cook Islands Amendment Act 1961, and shall be read together with and deemed part of the Cook Islands Act 1915* (hereinafter referred to as the principal Act).

*Reprinted 1958, Vol. 2, p. 851
Amendment: 1960, No. 32

PART I

INTOXICATING LIQUOR

2. Commencement—This Part of this Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General, by Proclamation. Different dates may be so appointed for the commencement of this Part in different islands of the Cook Islands.

3. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“The Cook Islands” includes the Island of Niue:

“Intoxicating liquor” means alcohol and any liquor containing alcohol; but, except as may be otherwise provided by any Ordinance or regulation, does not include—

(a) Perfumery or medicinal preparations containing spirit:

(b) Methylated spirit and other preparations containing spirit but not suitable for human consumption:

(c) Fermented or other liquor which on analysis is found to contain two or fewer parts per cent of proof spirit:

“Resident Commissioner”, in relation to the Island of Niue, means the Resident Commissioner of Niue, and, in relation to the Cook Islands other than Niue, means the Resident Commissioner of the Cook Islands; and in each case includes a Deputy Resident Commissioner lawfully acting in place of the Resident Commissioner.

4. Liquor control authority—(1) Subject to the provisions of this Part of this Act, the Legislative Assembly of the Cook Islands and the Niue Island Assembly, as the case may be may, by Ordinance,—

(a) Constitute an authority in the Cook Islands other than Niue or, as the case may be, in Niue, for the purpose of controlling the sale and consumption of intoxicating liquor in the Cook Islands other than Niue or, as the case may be, in Niue:

(b) Make provision for the appointment of the Chairman and members of the authority by the Resident Commissioner:

(c) Make provision for the sale and consumption of intoxicating liquor in the Cook Islands other than Niue or in Niue, as the case may be.

(2) In the exercise of its functions and powers, the authority shall comply with such policy directions as may from time to time be given to it by the Minister.

5. Manufacture of intoxicating liquor prohibited—(1) It shall not be lawful for any person to manufacture intoxicating liquor in the Cook Islands.

(2) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding six months or to a fine not exceeding fifty pounds.

6. Importation of intoxicating liquor—(1) Except as provided in section 7 of this Act, it shall not be lawful for any person to import any intoxicating liquor into the Cook Islands.

(2) Every person who commits an offence against subsection (1) of this section is liable to imprisonment for a term not exceeding one year or to a fine not exceeding one hundred pounds.

(3) Every person who in New Zealand is knowingly concerned in the exportation of intoxicating liquor from New Zealand or elsewhere for importation into the Cook Islands in breach of this section shall be deemed to have committed an offence against the Customs Act 1913, and is liable accordingly to the penalty provided in section 47 of that Act, and the liquor may be seized and shall be forfeited and disposed of under that Act.

(4) Every person who in New Zealand is knowingly concerned in the importation or attempted importation of intoxicating liquor in breach of this section is liable to a fine not exceeding two hundred pounds.

7. Resident Commissioner may import intoxicating liquor—
(1) The Resident Commissioner may, for and on behalf of the Crown, and at the cost of the Cook Islands Treasury or the Niue Island Treasury, as the case may be, purchase in New Zealand or elsewhere and import into the Cook Islands such intoxicating liquor as he thinks is required from time to time, either for the hospitals and medical services of the Cook Islands or for sale in accordance with the provisions of this Part of this Act.

(2) Any liquor so imported may be sold in accordance with the provisions of an Ordinance made under the powers conferred by section 4 of this Act and not otherwise.

8. Offences as to intoxicating liquor illegally manufactured or imported—Every person is liable to imprisonment for a term not exceeding six months or to a fine not exceeding fifty pounds who—

- (a) Carries or conceals any intoxicating liquor manufactured or imported in breach of the provisions of this Part of this Act; or
- (b) Has any such liquor in his possession or under his control; or
- (c) Is the owner, lessee, or occupier of any premises in or about which any such liquor is found, unless he satisfies the High Court that the liquor was there without his knowledge or consent.

9. Sale of intoxicating liquor—(1) It shall not be lawful for any person, other than the Resident Commissioner or such other person or persons as may from time to time be authorised by him in writing, to sell or offer for sale or have in his possession for sale any intoxicating liquor in the Cook Islands, and the Resident Commissioner and any person so authorised by the Resident Commissioner shall comply with the provisions of any Ordinance made under the powers conferred by section 4 of this Act.

(2) For the purpose of this section a contract of barter, or any other contract under or by virtue of which the property in any intoxicating liquor passes to any person, shall be deemed to be a contract of sale.

(3) In any prosecution for offering for sale or having in possession for sale any intoxicating liquor in breach of this section proof that any intoxicating liquor was found in the possession of the accused shall be evidence from which the High Court may infer that he had offered it for sale or had it in his possession for sale.

(4) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding one year or to a fine not exceeding one hundred pounds.

10. Restrictions on giving intoxicating liquor to other persons—(1) It shall not be lawful in the Cook Islands for any person to give intoxicating liquor to any other person, if that other person—

- (a) Is under the age of twenty-one years and is not a member of the household of the person giving the liquor; or
- (b) Is known to the person giving the liquor not to be entitled to purchase intoxicating liquor pursuant to the provisions of an Ordinance made under the powers conferred by section 4 of this Act, unless that other person is a bona fide guest of the person giving the liquor:

Provided that nothing in this subsection shall apply to the use of wine for sacramental purposes in accordance with the practice of the Christian religion or to the giving or administering of intoxicating liquor by or with the approval of a Medical Officer for medicinal purposes.

(2) Every person who commits an offence against this section is liable to a fine not exceeding fifty pounds.

11. Arrest of persons suspected of having illegally dealt with intoxicating liquor—(1) Any constable or officer of Customs may arrest without warrant any person whom on reasonable grounds he suspects of having committed an offence against paragraph (a) or paragraph (b) of section 8 of this Act.

(2) Where any person is arrested without warrant under this section, the provisions of subsection (2) of section 281 and section 283 of the principal Act shall apply as if he had been arrested under the said section 281.

12. Seizure and forfeiture of intoxicating liquor—(1) Any constable or officer of Customs may seize and remove any intoxicating liquor that on reasonable grounds he suspects has been manufactured, imported, carried, concealed, or sold in breach of the provisions of this Part of this Act or of any Ordinance made under the powers conferred by section 4 of this Act, and any vessel containing the liquor or used in its manufacture, importation, carriage, concealment, or sale.

(2) Upon the conviction for an offence against this Part of this Act or against any Ordinance made under the powers conferred by section 4 of this Act of any person appearing to the High Court to be an owner or to have been in possession of any intoxicating liquor or vessel seized under this section, or to be an owner or occupier of the place where the liquor or vessel was seized, the High Court, unless on special grounds it thinks it inadvisable to do so, shall make an order declaring

the liquor or vessel or both to be forfeited, and thereupon the liquor or vessel or both shall be deemed to be forfeited to the Crown and may be sold or destroyed or otherwise disposed of as the Resident Commissioner directs.

13. Search warrant—(1) Any Judge or Commissioner of the High Court, if satisfied on oath that there is reasonable ground to believe that in any place, premises, vehicle, or ship there is any intoxicating liquor that has been manufactured, imported, sold, carried, or concealed in breach of the provisions of this Part of this Act or of any Ordinance made under the powers conferred by section 4 of this Act, may grant a warrant under his hand pursuant to the provisions of section 314 of the principal Act.

(2) Every person who, by himself or by any person in his employ or acting by his direction or with his consent, refuses or fails to admit without any unnecessary delay any officer demanding to enter any place, premises, vehicle, or ship pursuant to a warrant issued under the provisions of subsection (1) of this section, or hinders or obstructs any officer in the execution of any such warrant, is liable to a fine not exceeding ten pounds.

14. Persons found on premises deemed illegally dealing in intoxicating liquor—When in the course of a search under a warrant issued pursuant to section 13 of this Act any intoxicating liquor has been seized,—

- (a) Without limiting the provisions of section 8 of this Act in any case to which that section applies, the occupier and the manager or other person in charge (if any) of the place, premises, vehicle, or ship searched shall each, until the contrary is proved, be deemed to have been unlawfully dealing in intoxicating liquor, and shall each be liable to a fine not exceeding ten pounds:
- (b) Any other person found at the time on the place, premises, vehicle, or ship searched in whose possession or under whose control that liquor, or any container or package containing that liquor, was found shall, until the contrary is proved, be deemed to have been there for the purpose of illegally dealing in intoxicating liquor, and shall be liable to a fine not exceeding ten pounds.

15. Names of persons found on premises searched may be demanded—(1) Where any constable or officer of Customs seizes any intoxicating liquor under the powers conferred by section 12 of this Act or by section 314 of the principal Act,—

- (a) He may demand the name and address of any person found present in the place, premises, vehicle, or ship where the liquor is seized, being the occupier or manager or other person in charge of the place, premises, vehicle, or ship or a person in whose possession or under whose control the liquor, or any container or package containing the liquor, has been found; and
- (b) If he has reasonable grounds to suspect that the name or address given is false, he may examine that person further as to the correctness of that name and address.

(2) If that person fails on demand to give his name and address or to answer satisfactorily the questions put to him, any constable may arrest him without warrant.

(3) Where any person is arrested without warrant under this section, the provisions of subsection (2) of section 281 and section 283 of the principal Act shall apply as if he had been arrested under the said section 281.

(4) Every person who is requested by a constable or an officer of Customs under subsection (1) of this section to give his name and address and who fails to give the same or gives false information with respect to that name or address is liable to a fine not exceeding ten pounds.

16. Repeals and revocation—(1) The following enactments are hereby repealed:

- (a) Part XXII of the principal Act;
- (b) Section 12 of the Cook Islands Amendment Act 1921;
- (c) So much of the Second Schedule to the Cook Islands Amendment Act 1957 as relates to section 602 of the principal Act.

(2) The Order in Council made on the sixth day of February, nineteen hundred and twenty-two, and published in the *Gazette* on the ninth day of February, nineteen hundred and twenty-two, at page 422, making regulations as to the sale of intoxicating liquor in the Cook Islands, is hereby revoked.

17. Reserved enactment—The First Schedule to the Cook Islands Amendment Act 1957 is hereby amended by adding, in the appropriate columns thereof, the following words:

“1961, No. 15—

The Cook Islands Amendment Act 1961	Part I.”
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PART II

MISCELLANEOUS AMENDMENTS

18. Execution of renewals of leases—The principal Act is hereby amended by inserting, after section 476, the following section:

“476A. (1) Notwithstanding any of the requirements of this Act as to the execution of instruments of alienation of Native land by Natives or descendants of Natives, the lessee under any lease of Native land (whether granted before or after the commencement of this section) who claims that he is entitled to a renewal of his lease may apply to the Native Land Court for an order directing the Registrar of the Court to execute, as agent of the owners, an instrument of renewal in accordance with the terms of the lease, and, if the Court is satisfied that—

“(a) The lessee is entitled to such a renewal; and

“(b) It is likely to be unduly difficult for the lessee to obtain within a reasonable time the execution by all the owners of an instrument of renewal in accordance with the provisions of the lease,—

the Court may make an order accordingly.

“(2) On the making of an order under this section the Registrar shall have authority in accordance with the terms of the order to execute the renewal of the lease as if he were the duly appointed agent of the owners.

“(3) Nothing in this section shall be construed to limit the authority of the High Court to make an order for specific performance or to grant to a lessee any other relief in respect of the default of the owners to renew any lease.”

19. Pardon and remission of sentence—The principal Act is hereby further amended by inserting in Part VI, after section 314A (as inserted by section 8 of the Cook Islands Amendment Act 1956), the following section:

“314B. (1) When any person has been convicted of an offence by the High Court, whether before or after the commencement of this section, the Governor-General, by warrant signed by him, may pardon the offender, or may remit any portion of a sentence of imprisonment passed upon the offender or any portion of a fine imposed upon him, or may commute a sentence of death to one of imprisonment.

“(2) In the case of an offender sentenced to imprisonment for a term of less than one year or to pay a fine not exceeding fifty pounds, the Resident Commissioner of the Cook Islands, with the concurrence of the Executive Committee of the Cook Islands, or, as the case may require, the Resident Commissioner of Niue, with the concurrence of the Niue Island Assembly, may exercise the like powers of pardon or remission.

“(3) In the case of an offender sentenced to imprisonment for a term of one year or more, the Resident Commissioner of the Cook Islands, with the concurrence of the Executive Committee, or, as the case may require, the Resident Commissioner of Niue, with the concurrence of the Niue Island Assembly, may, if the conduct and industry of the offender have been satisfactory, remit not more than one-fourth of the sentence.

“(4) Any such pardon or remission may be made subject to such conditions as the Governor-General or, as the case may be, the Resident Commissioner, with such concurrence as aforesaid, thinks fit.

“(5) The Governor-General may in like manner pardon any offender who has given evidence which leads to the conviction of an accomplice.

“(6) Nothing in this section shall affect the prerogative of mercy.”

20. Execution of instrument by attorney—Section 476 of the principal Act is hereby amended by omitting from subsection (1) the words “being a European”.

This Act is administered in the Department of Island Territories.
