

BEER DUTY BILL

EXPLANATORY NOTE

THIS Bill consolidates and amends the law relating to beer duty which is now included in Part III of the Finance Act 1915 and various other enactments.

While this Bill does not change the general intent of the present legislation it takes into account modern brewing techniques and practice, and brings the procedure into line with that of other Customs Acts.

Clause 1 relates to the Short Title and commencement. The Act is to come into force on 1 April 1978.

Clause 2 is the interpretation clause.

PART I

ADMINISTRATION

This Part (*clauses 3 to 5*) provides for the Act to be administered by the Customs Department, extends the powers and authorities in the Customs Act to beer duty and defines when beer is under the control of Customs. These are normal provisions for Customs Acts.

PART II

LICENCES

Clause 6 makes it an offence to brew beer for sale without a licence.

Clause 7 deals with applications for licences, which are to be forwarded to the Licensing Control Commission for approval.

Clause 8 empowers the Licensing Control Commission to approve or refuse to approve applications and for the Comptroller to issue the licences. Every licence is to be an annual one, expiring on 31 December in each year.

Clause 9 provides for the cancellation or suspension of a licence or the approval to operate a depot or bottling store where a person is convicted of an offence against this Bill.

Clause 10 provides for a right of appeal to the Administrative Division of the Supreme Court against the decision of the Licensing Control Commission to refuse to approve an application for a licence under *clause 8* or any approval to operate a depot or bottling store under *clause 14*.

Clause 11 deals with licence fees which are to be fixed by regulations hereunder.

PART III

GENERAL PROVISIONS AS TO BREWERS

Clause 12 makes it an offence to alter the strength or quality of beer after the duty has been paid.

Clause 13 restricts the days and hours during which beer may be delivered.

Clause 14 empowers the Licensing Control Commission to approve or refuse to grant any approval as to delivery points for beer.

PART IV

IMPOSITION, COLLECTION, AND PAYMENT OF BEER DUTY

Clause 15 provides that beer duty is to be paid on all beer brewed in New Zealand for sale or pursuant to a licence under this Bill, but not delivered from any brewery. Where beer duty has already been paid on any beer under Part III of the Finance Act 1915, the brewer is to take account of all such beer remaining in the brewery on 31 March 1978 and is to be entitled to receive a credit for the amount of any duty so paid, which shall be applied against any future payment of beer duty in such manner and under such conditions as may be prescribed. Where beer is exported from New Zealand or delivered to another person holding a brewers' licence, duty is not payable at that stage.

The new rates of beer duty are set out in the First Schedule to the Bill and are not directly comparable as the duty is rated on a different basis. However it is estimated that the amount of duty to be collected will be approximately the same.

The clause also includes the present provision that the Governor-General may, by Order in Council, reduce the rates of beer duty.

Clause 16 provides that no beer brewed for export may be delivered from any brewery without the authority of the Collector.

Clause 17 provides that beer consumed in a brewery shall be liable for **beer duty in the same manner as if it had been delivered from the brewery on the date it was consumed.**

Clause 18 provides that beer duty is not to be levied on samples of beer for testing purposes.

Clause 19 provides that beer duty shall be a debt due to the Crown on the delivery of the beer from the brewery.

Clause 20 provides for credit in respect of beer duty to be given for beer **returned to a brewery.**

Clause 21 provides that beer duty is to be payable on delivery of beer from a brewery, but the Collector may permit payment by 3 p.m. on Thursday of the week following the week in which beer was delivered.

Clause 22 provides for assessment of beer duty.

Clause 23 deems assessments of beer duty by Collector to be correct.

Clause 24 provides that the Collector may prohibit any brewer who fails to pay any beer duty from brewing.

Clause 25 provides for the incidence of duty when rates of duty are changed.

PART V

SECURITIES

This Part inserts the usual provisions to cover securities for payment of duty.

PART VI

REFUNDS, REMISSIONS, AND DRAWBACK OF BEER DUTY

Clauses 27 to 29 insert the usual Customs provisions in respect of the recovery of duty paid in error, refund of duty paid in error, and recovery of duty refunded in error.

Clause 30 provides for a refund of duty in respect of any beer delivered from a brewery which had been spoiled by accident or misfortune before it left the brewery.

Clause 31 repeats the present provisions allowing the Governor-General, by Order in Council, to remit beer duty payable by certain organisations and their members.

Clause 32 deals with drawbacks of beer duty for beer exported from New Zealand.

PART VII

POWERS OF OFFICERS

This Part deals with the normal provisions in Customs Acts in respect of the power to question persons, to requisition records, and to impound records.

Clause 36 provides for power of entry into breweries, depots, and bottling stores and *clause 37* provides for the taking of samples of wort or beer.

PART VIII

OFFENCES AND PENALTIES

Clause 38 provides that any person who does an act with intent to defraud the Revenue—

- (a) By evading, or enabling any other person to evade payment of duty;
or
- (b) By obtaining, or enabling any other person to obtain any refund or drawback of duty; or
- (c) In any other manner,—

commits an offence. The penalty for the offence is to be a fine not exceeding \$1,000 or 3 times the amount of duty evaded, whichever is the greater.

Clause 39 provides that any person who knowingly makes a false or erroneous declaration commits an offence against this Act.

Clause 40 deals with the liability of the officers of a body corporate where the body commits an offence against this Act.

Clause 41 provides for offences to be dealt with summarily except where expressly provided otherwise.

Clause 42 provides that informations may be laid for an offence against this Act within 3 years after the date of the offence.

Clause 43 makes it an offence to produce false documents.

Clause 44 makes it an offence to make unauthorised alterations to a brewery.

Clause 45 makes it an offence to obstruct any officer in the course of his duty.

Clause 46 provides for a general penalty of a fine not exceeding \$500.

Clause 47 provides that in any proceedings brought by the Crown under the Bill, every allegation relating to the quality of beer manufactured, the rate of duty payable, the place of manufacture, the fact or time of delivery of any beer, the payment of any duty, or any question concerning licensing under the Bill is to be presumed to be true unless the contrary is proved.

PART IX

MISCELLANEOUS PROVISIONS

Clause 48 provides for the keeping of records by brewers.

Clause 49 deals with the giving of notices.

Clause 50 provides for declarations to be made in the prescribed form.

Clause 51 inserts the normal provision in Customs Acts that no Order in Council or regulation is to be invalid because it leaves any matter to the discretion of the Minister or any other person.

Clause 52 empowers the Comptroller to prescribe forms. This is a normal power in a Customs Act.

Clause 53 provides for regulations to be made.

Clause 54 is a transitional provision providing that any beer of which the delivery is made before 1 April 1978 shall be liable for beer duty under the provisions repealed by this Bill.

Clause 55 provides the consequential amendments and *clause 56* the repeals.

Hon. Mr Wilkinson

BEER DUTY

ANALYSIS

- | | |
|---|--|
| <p>Title</p> <ol style="list-style-type: none">1. Short Title and commencement2. Interpretation <p style="text-align: center;">PART I</p> <p style="text-align: center;">ADMINISTRATION</p> <ol style="list-style-type: none">3. Act to be administered by Customs Department4. Extension of powers and authorities5. Control of the Customs <p style="text-align: center;">PART II</p> <p style="text-align: center;">LICENCES</p> <ol style="list-style-type: none">6. Unlawful to brew without licence7. Application for licence8. Grant or refusal of licence9. Cancellation, suspension, or revocation of licence or approval following conviction10. Appeal against approval or refusal of licence11. Licence fees <p style="text-align: center;">PART III</p> <p style="text-align: center;">GENERAL PROVISIONS AS TO BREWERS</p> <ol style="list-style-type: none">12. Offence to alter strength or quantity of beer after declaration13. Restrictions as to sale of beer by licensed brewers14. Grant or refusal of approval of depots or bottling stores not forming part of brewery <p style="text-align: center;">PART IV</p> <p style="text-align: center;">IMPOSITION, PAYMENT, AND COLLECTION OF BEER DUTY</p> <ol style="list-style-type: none">15. Rates of duty on beer brewed in New Zealand | <ol style="list-style-type: none">16. Delivery of beer brewed for export17. Beer duty payable on beer consumed before delivery from brewery18. Samples for testing purposes19. Beer duty a Crown debt20. Credit for beer duty already paid21. Returns by licensees22. Assessment of beer duty23. Assessment presumed to be correct24. Brewing may be prohibited on non-payment of duty25. Incidence of altered duties <p style="text-align: center;">PART V</p> <p style="text-align: center;">SECURITIES</p> <ol style="list-style-type: none">26. Brewer to give security for payment of duty <p style="text-align: center;">PART VI</p> <p style="text-align: center;">REFUNDS, REMISSIONS, AND DRAWBACK OF BEER DUTY</p> <ol style="list-style-type: none">27. Recovery of beer duty paid in error28. Refund of beer duty paid in error29. Recovery of beer duty refunded in error30. Refund of duty on spoilt beer31. Refund of duty on beer supplied to certain organisations and their members32. Drawbacks when beer is exported <p style="text-align: center;">PART VII</p> <p style="text-align: center;">POWERS OF OFFICERS</p> <ol style="list-style-type: none">33. Power to question persons34. Requisition to produce records35. Power to impound records |
|---|--|

36. Officer may enter breweries, depots,
or bottling stores
37. Taking of samples

PART VIII

OFFENCES AND PENALTIES

38. Defrauding the Revenue
39. Knowingly false or erroneous de-
clarations
40. Offences by corporations
41. Offences punishable on summary
conviction
42. Procedure
43. Production of false documents
44. Unauthorised structural alterations
45. Obstructing officers

46. General penalty
47. Burden of proof

PART IX

MISCELLANEOUS PROVISIONS

48. Keeping of business records
49. Giving of notices
50. Declarations under this Act
51. General provisions as to Orders in
Council and regulations
52. Power of Comptroller to prescribe
forms
53. Regulations
54. Transitional provisions as to liability
for beer duty
55. Consequential amendments
56. Repeals
Schedules

A BILL INTITULED

**An Act to make provision for the imposition and collection of
beer duty**

BE IT ENACTED by the General Assembly of New Zealand
in Parliament assembled, and by the authority of the same, 5
as follows:

1. Short Title and commencement—(1) This Act may be
cited as the Beer Duty Act 1977.

(2) This Act shall come into force on the 1st day of April 10
1978.

2. Interpretation—(1) In this Act, unless the context other-
wise requires,—

“Beer” means the product of the alcoholic fermentation
of liquid that—

(a) On analysis is found to contain more than 15
1.7 percent of alcohol by volume; and

(b) Is derived from a mash of malted grain or
hops or any extract thereof, or other harmless vege-
table bitters,—

and includes all other malt liquor or fermented 20
beverages made in imitation of beer or malt liquor
and which on analysis are found to contain more than
1.7 percent of alcohol by volume:

“Beer duty” or “duty” means any duty payable under this Act:

“Brewer” means any person who occupies, carries on, or conducts any brewery in which beer is made for sale; and includes—

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(a) Any other person acting or apparently acting in the management, control, or working of any brewery, where the owner is not personally conducting the same; and

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(b) Any company or association of persons, whether incorporated or not, wholly or partly engaged in carrying on or conducting any such brewery:

“Brewery” means any place where beer is made for sale, together with such adjoining land as may be specified in any licence granted in accordance with this Act; and includes—

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(a) All buildings in that place or on that land; and

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(b) Any depot or bottling store, situated outside the brewery or its adjoining land, which the Comptroller may approve as forming part of the brewery:

“Collector” has the same meaning as in section 2 of the Customs Act 1966:

“Comptroller” has the same meaning as in section 2 of the Customs Act 1966:

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“Declaration” means a declaration made in accordance with the provisions of this Act in that behalf:

“District” means a district within the meaning of the Customs Act 1966:

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“Licence” means a licence under this Act; and “licensed”, “licensee”, and “to licence” have corresponding meanings:

“Licensing Control Commission” means the Licensing Control Commission established under the Sale of Liquor Act 1962:

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“Minister” means the Minister of Customs:

“No-licence district” means a no-licence district under the Sale of Liquor Act 1962:

“Officer” means an officer of Customs acting under the Customs Act 1966; and includes any other person appointed to be an officer for the purposes of this Act:

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“Prescribed” means prescribed by regulations under this Act or by the Comptroller:

“Records” means all papers, books, registers, discs, films, tapes, sound tracks, or other devices or things in or on which information is recorded or stored.

(2) In this Act, unless the context otherwise requires, where an alcoholic strength is stated as a percentage of alcohol, it shall mean parts percent of ethyl alcohol by volume at 20°c. 5

Cf. 1915, No. 39, s. 33; 1948, No. 74, s. 72 (1); 1962, No. 139, s. 300

PART I

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ADMINISTRATION

3. Act to be administered by Customs Department—This Act shall be administered by the Customs Department.

Cf. 1915, No. 39, s. 34

4. Extension of powers and authorities—The powers and authorities of the Minister, the Comptroller, and every Collector under the Customs Act 1966 shall, with any necessary modifications, apply in the same manner to the collection of beer duty under this Act as they apply to the collection of duty under the Customs Act 1966. 15 20

Cf. 1915, No. 39, s. 54

5. Control of the Customs—Beer brewed in New Zealand for sale or pursuant to a licence issued under section 8 (4) of this Act shall be subject to the control of the Customs—

- (a) In the case of beer under drawback, from the time of the claim for drawback until exportation to any country outside New Zealand: 25
- (b) In the case of all other beer, from the time brewing commences until beer duty is paid in accordance with this Act. 30

PART II

LICENCES

6. Unlawful to brew without licence—(1) It shall not be lawful for any person to carry on the trade or business of a brewer otherwise than pursuant to the authority of, and in conformity with, the terms and conditions of the licence granted under this Act. 35

(2) Subject to this Act, every person who unlawfully brews or is otherwise concerned in unlawfully brewing beer for sale, commits an offence against this Act.

5 (3) Every person who commits any offence against sub-section (2) of this section shall be liable to a fine not exceeding \$1,000 or 3 times the value of the beer duty evaded on such beer brewed during the commission of the offence, whichever is the greater.

10 (4) Every assessment by the Collector of beer duty evaded in accordance with subsection (3) of this section shall be taken to be correct, and the burden of proof that any such assessment is incorrect shall be on the offender.

Cf. 1915, No. 39, s. 37

7. Application for licence—(1) Every application for a
15 brewer's licence shall be made in writing in the prescribed form to the Collector for the district in which the brewery is situated or is proposed to be situated and shall be accompanied by the prescribed fee.

20 (2) The application shall contain a particular description of the premises in which the brewery is situated or is proposed to be situated and of the plant for manufacturing beer, and shall contain such other particulars as may be required.

(3) Except in the case of an application for—

- 25 (a) The renewal of a licence previously granted; or
(b) A new licence in lieu of a licence formerly held by the applicant but which, had within 6 months before the application for the said new licence, lapsed or otherwise determined,—

30 every application for a brewer's licence shall be forwarded to the Licensing Control Commission for approval.

(4) The Licensing Control Commission shall not approve of an application for a licence in respect of a brewery situated within a no-licence district within the meaning of the Sale of Liquor Act 1962.

35 Cf. 1915, No. 39, s. 38; 1948, No. 74, s. 71 (2)

8. Grant or refusal of licence—(1) Subject to this Act the Licensing Control Commission may, in its discretion, approve or refuse to approve any application for a brewer's licence.

40 (2) Before any approval for any licence is given, the Licensing Control Commission shall satisfy itself that the applicant is a fit and proper person to hold such a licence on the grounds that he is of good character and reputation.

(3) Every licence shall be subject to such terms and conditions as may be prescribed by regulations under this Act.

(4) The Collector, if satisfied that the conditions of this Act have been complied with, shall issue to the applicant a licence in the prescribed form. 5

(5) Every brewer's licence shall be in force until the 31st day of December next after the date thereof and shall entitle the holder to sell beer in quantities of not less than 8 litres, without taking out a wholesale or other licence under any other Act. 10

(6) Every brewer's licence shall, on payment of the prescribed fee, be renewable not later than the 31st day of January in each year and, if so renewed, shall continue in force until the 31st day of December thereafter.

(7) Where a brewery is carried on by 2 or more persons in partnership only one licence shall be necessary. 15

(8) No structural alteration of, or structural addition to, any brewery or any plant mentioned in the licence, except in cases of unavoidable accident or emergency (proof whereof shall lie upon the brewer), shall be made without the permission in writing of the Collector. 20

(9) The Comptroller may approve, as forming part of any brewery licensed under this Act, any depot or bottling store situated outside the brewery or its adjoining land.

Cf. 1915, No. 39, s. 38; 1917, No. 9, s. 48 (2) 25

9. Cancellation, suspension, or revocation of licence or approval following conviction—(1) Where—

(a) The holder of a brewer's licence; or

(b) A person approved to operate a depot or bottle store pursuant to section 14 of this Act— 30

is convicted of an offence against this Act, the Registrar of the Court shall notify the Licensing Control Commission of the conviction.

(2) In any case—

(a) Where subsection (1) (a) of this section applies, the Licensing Control Commission shall make an order either— 35

(i) Cancelling the licence; or

(ii) Suspending the licence for such period, not exceeding 12 months, as it thinks fit; or 40

(b) Where subsection (1) (b) of this section applies, the Licensing Control Commission shall make an order revoking the approval—

unless it is satisfied that it would be unjust or unduly harsh to make such an order:

Provided that the Licensing Control Commission shall not make an order under this section until it has afforded the
5 brewer an opportunity to be heard in relation to the matter.

Cf. 1917, No. 9, s. 48 (1)

10. Appeal against approval or refusal of licence—(1) Any person who is refused a licence under section 8 or refused approval under section 14 of this Act may appeal to the
10 Administrative Division of the Supreme Court against the Licensing Control Commission's decision.

(2) Every such appeal shall be made by giving notice of appeal within 28 days after the date on which the appellant was notified of the Licensing Control Commission's decision
15 appealed against or within such further time as the Court may allow on application made either before or after the expiration of those 28 days.

(3) In its determination of any appeal, the Court may confirm or reverse the decision appealed against. If the
20 decision is reversed it shall be referred back to the Licensing Control Commission which shall approve the application subject to such terms and conditions as it is authorised to impose under this Act or regulations made thereunder.

Cf. 1917, No. 9, s. 48 (3) to (7)

25 11. Licence fees—(1) There shall be paid to the Collector by the holder of a brewer's licence, in accordance with regulations made under this Act, an annual licence fee of such amount as may be prescribed.

(2) On the first grant of any licence a proportionate part
30 of the proper annual licence fee, for the period elapsing between the time at which the licence takes effect and the next succeeding 31st day of December, shall be payable by the licensee.

(3) On the revocation or expiry of any licence the Com-
35 troller may allow a refund or remission to the licensee of a proportionate part of the licence fee for the current year of the licence, calculated from the date of such revocation or expiry to the end of that year.

(4) Every brewery specified in any brewer's licence granted
40 under Part III of the Finance Act 1915 and in force as at the 31st day of March 1978, shall be deemed to have been licensed

as a brewery under this Act, and such licence shall continue in force subject to this Act and to any restrictions existing in respect of the brewery at that date.

PART III

GENERAL PROVISIONS AS TO BREWERS

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12. Offence to alter strength or quantity of beer after declaration—Every brewer commits an offence against this Act who alters the strength or quantity of any beer after liability for beer duty has arisen under section 19 of this Act.

13. Restrictions as to sale of beer by licensed brewers— 10

(1) A brewer shall not be entitled to sell or deliver any beer—

(a) On any day during which licensed premises within the meaning of the Sale of Liquor Act 1962 are required to be closed; or

(b) On any other day, at any time before 7 a.m. or after 15
6 p.m.:

Provided that beer may be delivered before 7 a.m. or after 6 p.m. to the holder of any licence granted under the Sale of Liquor Act 1962, or to any chartered club, or to the Licensing Trust of any Licensing Trust district, or to any brewery, if the delivery is made at the licensed premises of the holder of that licence or, as the case may be, at the premises of the club, the Trust premises, or the brewery. 20

(2) No beer shall be sold or delivered under the authority of a brewer's licence unless the delivery is to be made from 25
a brewery:

Provided that beer may also be sold or delivered from any depot or bottling store approved for the purpose by the Licensing Control Commission where it is to be delivered to the holder of any licence granted under the Sale of Liquor Act 1962, or to any chartered club or to the Licensing Trust of any Licensing Trust district, or to any brewery. 30

(3) Any brewer who, either by himself or his authorised agent, sells or delivers any beer contrary to this section, commits an offence against this Act. 35

Cf. 1917, No. 9, s. 46

14. Grant or refusal of approval of depots or bottling stores not forming part of brewery—(1) Every application for approval to operate a depot or bottling store not forming part of a brewery shall be made in writing in the prescribed form to the Collector of the district in which the depot or bottling store is situated or is proposed to be situated. 40

(2) Every application for approval of a depot or bottling store shall be forwarded to the Licensing Control Commission for approval:

5 Provided that the Licensing Control Commission shall not give its approval—

- (a) Where it considers that the applicant is not a fit and proper person to operate a depot or bottling store; or
- (b) Where the depot or bottling store is situated within a no-licence district within the meaning of the Sale of Liquor Act 1962.

10 Cf. 1940, No. 19, s. 5 (1)

PART IV

IMPOSITION, PAYMENT, AND COLLECTION OF BEER DUTY

15 15. Rates of duty on beer brewed in New Zealand—

(1) Subject to this Part of this Act, duty in accordance with the rates set out in the First Schedule to this Act shall be levied, collected, and paid on all beer brewed in New Zealand for sale or pursuant to a licence under this Act, including any beer brewed before the commencement of this Act but not yet delivered from any brewery:

Provided that every brewer shall—

- (a) Take an account of all beer and wort remaining in his brewery as at the end of the 31st day of March 1978; and
- 25 (b) Calculate the total amount of beer duty on all such beer and wort pursuant to Part III of the Finance Act 1915; and
- (c) Deduct from that amount the amount of any beer duty liable to be paid on such beer and not yet paid pursuant to the said Part III; and
- 30 (d) Apply any balance against any future payment of beer duty pursuant to this subsection in such manner and under such conditions as may be prescribed.

(2) Where beer brewed in New Zealand is—

- 35 (a) Sold or disposed of by the holder of a brewer's licence to any other person who is the holder of a brewer's licence; or

(b) Exported by the holder of a brewer's licence—

beer duty shall not be payable in respect of that transaction.

40 (3) Notwithstanding section 19 (1) of this Act, where, in any case to which paragraph (a) of subsection (2) of this section applies, the quantity of beer received is less than that recorded as having been despatched, duty on the deficient

quantity shall immediately constitute a debt due to the Crown, and such duty shall accordingly be paid by the holder of the brewer's licence to whom the beer was despatched.

(4) Subject to subsection (5) of this section the Governor-General may from time to time, by Order in Council, suspend the rates of duty set out in the First Schedule to this Act in whole or in part, and by the same or a subsequent Order in Council, in lieu thereof, impose on beer brewed in New Zealand such rates of duty as he thinks fit. 5

(5) Any duty imposed on beer brewed in New Zealand pursuant to subsection (4) of this section shall not exceed the existing rates of duty on that beer as set out in the First Schedule to this Act. 10

Cf. 1974, No. 4, s. 17

16. Delivery of beer brewed for export—No beer brewed for export and subject to the control of Customs may be delivered from any brewery— 15

(a) Until an export entry has been lodged with the Collector; or

(b) Without the permission of the Collector under such conditions as he may require. 20

17. Beer duty payable on beer consumed before delivery from brewery—Beer duty shall be payable on beer consumed before delivery from a brewery in the same manner as if the beer had been delivered on the date it was consumed and the provisions of this Act shall, with any necessary modifications, apply accordingly. 25

18. Samples for testing purposes—Samples of beer brewed in accordance with this Act may be delivered to the brewer, without payment of duty, in such quantities and subject to such conditions as may be prescribed. 30

19. Beer duty a Crown debt—(1) The duty on any beer made in New Zealand for sale, or made pursuant to a licence under this Act, shall, immediately on delivery of the beer from the brewery, constitute a debt due to the Crown. 35

(2) Such debt shall be owing by the brewer and by every person who, at any time before the debt is fully paid, is or becomes the owner of or entitled to the possession of or beneficially interested in the beer; and all such persons shall be jointly and severally liable for the duty. 40

(3) Such debt shall be recoverable by action at the suit of the Collector on behalf of the Crown.

5 (4) The right to recover duty as a debt due to the Crown shall not be affected by the fact that the beer has ceased to be subject to the control of the Customs, or that a bond or other security has been given for the payment of duty, or that no proper assessment of duty has been made in due course under this Act, or that a deficient assessment has been made.

10 20. Credit for beer duty already paid—A brewer shall in any return under section 21 of this Act, be entitled to deduct from beer duty payable by him for the period to which the return relates, the amount of any beer duty paid or payable by him on any beer returned to the brewery.

15 21. Returns by licensees—(1) Subject to this Part of this Act, every licensee shall deliver to the Collector a return in the prescribed form setting out such particulars as the form may require, immediately on delivery of the beer from the brewery and beer duty shall be payable immediately in accordance with such return:

20 Provided that the Collector may, in his discretion, allow delivery of the return and payment of duty at any time before 3 p.m. on Thursday of the week following the week in which the beer was delivered from the brewery.

25 (2) Every licensee who fails to deliver to the Collector any return required by this section commits an offence against this Act.

Cf. 1915, No. 39, s. 47; 1964, No. 62, s. 15

30 22. Assessment of beer duty—(1) The returns required by section 21 of this Act may be accepted by the Collector as sufficient proof of the matters therein contained, and beer duty may be assessed by the Collector accordingly.

35 (2) If the Collector has reason to believe or suspect that the amount of beer duty shown in any return as aforesaid as payable on any beer is less than the amount payable under this Act, he may assess the beer duty at such greater amount as he thinks proper.

40 (3) If the Collector has reason to believe or suspect that beer duty is payable on any beer under this Act by any person who has not made a return in respect thereof, he may assess the beer duty at such amount as he thinks proper.

23. **Assessment presumed to be correct**—Every assessment made by the Collector under this Part of this Act shall be taken to be correct and beer duty shall be payable accordingly, unless in proceedings taken under this Act for the recovery of beer duty, a different amount is proved to be the beer duty payable on the beer or it is proved that no beer duty is payable. 5

24. **Brewing may be prohibited on non-payment of duty**—Every brewer who fails to pay any duty which is properly due may, by notice under the hand of the Collector, be prohibited from brewing, and every brewer who brews beer without the permission of the Collector after the receipt of such notice shall be deemed to have brewed beer without a licence. 10

Cf. 1915, No. 39, s. 48

25. **Incidence of altered duties**—The liability to duty of any beer brewed in New Zealand for sale, or pursuant to a licence under this Act, and the rate of duty to which such beer is liable shall be determined by the law in force at the time the duty constitutes a debt due to the Crown in accordance with this Act. 15
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PART V SECURITIES

26. **Brewer to give security for payment of duty**—(1) A Collector shall have the right to require and take securities for the payment of beer duty and generally for compliance with this Act and for the protection of the revenue payable under this Act, and, pending the giving of the required security, he may refuse to issue any licence or may suspend any licence, or may refuse to do any other act in the execution of his office in relation to any matter in respect of which the security is required. During the period of any such suspension the holder of the licence shall be deemed to be unlicensed. 25
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(2) Any security under this Act may, as required by the Collector, be by bond (with or without sureties) or guarantee to Her Majesty the Queen, or by deposit of cash, or by all or any of these methods, to the satisfaction of the Collector. 35

(3) Any such security may be given either in relation to any particular transaction, or generally with respect to any class of transactions, or to all transactions, and for such period and amount as the Collector thinks fit, and under such conditions as to penalty, or otherwise, as the Minister may direct. 40

(4) Any bond or security entered into or given under this Act by a minor (otherwise than as a surety or guarantor) shall have the same force, effect, and validity as if that person had been of full age.

5 (5) If at any time the Collector is dissatisfied with the sufficiency of any security, he may require a new security in its place or in addition thereto; and, if the new security is not given, he may suspend any licence or may refuse to issue any licence or to do any other act in the execution of his office in
10 relation to any matter in respect of which the new security is required. During the period of any such suspension the holder of the licence shall be deemed to be unlicensed.

PART VI

REFUNDS, REMISSIONS, AND DRAWBACK OF BEER DUTY

15 27. Recovery of beer duty paid in error—At any time within 1 year after payment of any sum by way of beer duty the person by whom payment was so made may institute proceedings against the Crown for a refund of such duty, or
20 of any part thereof, on the ground that the beer duty was not lawfully chargeable or was charged in excess, and whether the error alleged is one of fact or of law.

28. Refund of beer duty paid in error—If the Comptroller is satisfied that any beer duty has been paid in error, whether of fact or of law, he may refund it—

25 (a) At any time within 3 years after it has been paid; or
(b) At any later time on an application made within such
3 years.

29. Recovery of beer duty refunded in error—All money refunded in error, whether of fact or of law, by the Comptroller or any Collector shall be recoverable by action at the
30 suit of the Crown at any time within 3 years after the payment thereof, or without limit of time if the refund has been obtained by fraud.

35 30. Refund of duty on spoilt beer—Where the Collector is satisfied that any beer delivered from any brewery has, through accident or misfortune without the wilful act or negligence of the brewer, been spoiled before delivery from the brewery, the Collector may cause any such beer to be destroyed or otherwise dealt with and he may refund or remit
40 any duty paid or payable thereon.

31. Refund of duty on beer supplied to certain organisations and their members—(1) The Governor-General may from time to time, by Order in Council, authorise the remission or refund of any beer duty paid in respect of beer manufactured in New Zealand and— 5

(a) Supplied solely for the use of such organisations, expeditions, or other bodies as may be approved by the Minister and as may from time to time be established or temporarily based in New Zealand on any agreement or arrangement entered into by or on behalf of the Government of New Zealand with the Government of any other country or with the United Nations; or 10

(b) Supplied solely for the use of persons temporarily resident in New Zealand for the purpose of serving as members of any such approved organisation, expedition, or other such body. 15

(2) In respect of any beer to which any Order in Council made for the purposes of this section relates, the Comptroller may at any time impose such conditions as he thinks fit. 20

Cf. 1915, No. 39, s. 49A; 1964, No. 62, s. 16

32. Drawbacks when beer is exported—Drawbacks of beer duty paid on beer brewed in New Zealand may, subject to regulations under this Act, be allowed on beer exported from New Zealand under the like conditions and restrictions as are applicable to drawbacks of duty under the Customs Act 1966. 25

PART VII

POWERS OF OFFICERS

33. Power to question persons—(1) The Collector may question any person as to the particulars shown in any document delivered to him by any brewer in accordance with this Act or regulations made thereunder, and may, if he thinks fit, require from the brewer proof by declaration or by the production of records (in addition to any declaration or records otherwise required by this Act or regulations made thereunder) of the correctness of the document. 30 35

(2) Any person who on being so questioned refuses or fails to answer any question so put to him, or to answer any such question in writing if so required by the Collector, or answers any such question incorrectly, or refuses or fails without reasonable cause to make any such declaration or to produce any such record, commits an offence. 40

34. Requisition to produce records—(1) Where any question has arisen under this Act, the Collector may, by order under his hand and the seal of the Customs, require any person (including any officer employed in or in connection
5 with any Government department)—

(a) To furnish in writing any information and produce for inspection any records to the Collector or any specified officer, being information or records which the Collector considers necessary or relevant to the
10 administration or enforcement of this Act; or

(b) To allow the Collector or any specified officer to make copies of or extracts from those records; or

(c) To appear before the Collector or other specified officer and to answer all questions put to him concerning
15 those records.

(2) Any person who knowingly fails or refuses to comply with any order made under this section or, on being questioned, fails or refuses to answer any question put to him, or to answer any such question in writing if so required by the
20 Collector or specified officer, or knowingly answers any such question incorrectly, commits an offence against this Act.

35. Power to impound records—The Collector may impound or retain any records presented in connection with any document required to be produced under this Act or regulations made thereunder; but the person otherwise entitled to
25 the records shall, where practicable, be entitled in their place to a copy certified as correct by the Collector under the seal of the Customs and the copy so certified shall be received in all Courts as evidence in place of the original.

30 36. Officer may enter breweries, depots, or bottling stores—
The Collector or any officer may at all times enter any brewery, depot, or bottling store and have free access to every part thereof and may remain therein as long as he deems necessary for the purpose of inspecting such brewery, depot,
35 or bottling store, and may take account of all materials received or used therein, and of all beer and wort therein and may gauge or otherwise ascertain the capacity or contents of every vessel used or intended for use in such brewery, depot, or bottling store.

40 Cf. 1915, No. 39, s. 62

37. Taking of samples—(1) The Collector or any officer may at any time take a sample of any wort or beer free of charge, in the prescribed manner, in order to ascertain its specific gravity or alcoholic strength.

(2) Such sample shall be divided into 3 approximately equal parts which shall be sealed, and 1 part shall be handed to the brewer, 1 shall be retained by the Collector and 1 shall be sent by the Collector to the Department of Scientific and Industrial Research for analysis and report.

(3) The report of the said Department shall be proof of the correct specific gravity and alcoholic strength unless the contrary is proved.

Cf. 1915, No. 39, s. 63

PART VIII

OFFENCES AND PENALTIES

38. Defrauding the Revenue—(1) Every person who contravenes any provision of this Act, or does any other act with intent to defraud the revenue—

(a) By evading or enabling any other person to evade payment of any duty; or

(b) By obtaining or enabling any other person to obtain any money by way of drawback or refund of any duty; or

(c) In any other manner whatsoever in relation to any duty—

or who conspires with any other person (whether that other person is in New Zealand or not) so to defraud the revenue in relation to any beer duty, commits an offence.

(2) Every person who commits any offence against subsection (1) of this section shall be liable to a fine not exceeding \$1,000 or 3 times the amount of the beer duty evaded on beer brewed during the commission of the offence, whichever is the greater.

39. Knowingly false or erroneous declarations—Every person who knowingly makes any false or erroneous declaration under this Act or regulations made thereunder commits an offence against this Act.

40. Offences by corporations—(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or conniv-

ance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the body corporate, or of any person who was purporting to act in any such capacity, he as well as the body corporate
5 shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts or defaults of a member in connection with his functions of
10 management as if he were a director of the body corporate.

41. Offences punishable on summary conviction—Except where this Act otherwise provides, every offence against this Act or regulations made thereunder shall be punishable on summary conviction.

15 **42. Procedure**—Notwithstanding anything in the Summary Proceedings Act 1957, any information for an offence against this Act or regulations made thereunder may be laid at any time within 3 years after the date of the offence.

20 **43. Production of false documents**—Every person who knowingly produces or delivers to an officer in the execution of his office any document as genuine that is not genuine, or any document as true that is in any respect erroneous, commits an offence against this Act.

25 **44. Unauthorised structural alterations**—Subject to section 8 (8) of this Act, any person who makes any structural alteration or structural addition to any brewery or to any plant mentioned in a brewer's licence without the permission in writing of the Collector commits an offence against this Act.

30 **45. Obstructing officers**—Every person commits an offence against this Act who wilfully obstructs any officer in the exercise or performance of the duty imposed on the officer by this Act or regulations made thereunder.

Cf. 1915, No. 39, s. 64

35 **46. General penalty**—Every person who commits an offence against this Act or regulations made thereunder for which no other penalty is provided shall be liable to a fine not exceeding \$500.

47. Burden of proof—(1) In any proceedings under this Act instituted by or on behalf of the Crown (other than a prosecution for an indictable offence) every allegation made on behalf of the Crown in any statement of claim, statement of defence, plea, or information, and relating to the quantity of any beer manufactured, or to the rate of duty payable on any beer, or to the place of manufacture of any beer, or to the fact or time of delivery of any beer, or to the payment of any beer duty, or to any question concerning licensing under this Act, or to any act done or omitted with respect thereto by any person, shall be presumed to be true unless the contrary is proved. 5

(2) The aforesaid presumption shall not be excluded by the fact that evidence is produced on behalf of the Crown in support of any such allegation. 10

(3) For the purposes of this section a summary prosecution for an offence against this Act shall be deemed to be a proceeding instituted on behalf of the Crown. 15

(4) For the purposes of this section every proceeding instituted by or against the Crown in which any question arises as to the rights, powers, obligations, or liabilities of the Crown or any other person under this Act shall be deemed to be a proceeding under this Act. 20

(5) The provisions of this section shall extend and apply to proceedings in which the existence of an intent to defraud the revenue is an issue. 25

Cf. 1915, No. 39, s. 66

PART IX

MISCELLANEOUS PROVISIONS

48. Keeping of business records—(1) Subject to subsection (2) of this section, every brewer shall keep sufficient records to the satisfaction of the Collector to enable his liability for beer duty to be readily ascertained, and shall retain all such records so kept after the commencement of this Act for a period of at least 7 years after the completion of the transactions, acts, or operations to which they relate. 30

(2) This section shall not require the retention of any records—

(a) In respect of which the Collector has given notice that retention is not required; 40

(b) Of a company that has been wound up and finally dissolved.

(3) Every brewer who fails to keep records in accordance with this section commits an offence and shall be liable to a fine not exceeding \$200.

Cf. 1915, No. 39, ss. 51 to 53, 60

- 5 49. Giving of notices—(1) Any notice required by this Act to be given by the Comptroller or by any Collector to any person may be—
- (a) Given to him personally; or
 - 10 (b) Sent to him by post addressed to him at his usual or last known place of abode or business; or
 - (c) Given personally to any other person authorised to act on behalf of that person; or
 - (d) Sent to that other person addressed to him at his usual or last known place of abode or business.
- 15 (2) Any notice sent by post to any person shall be deemed to have been received by him when in the normal course of post it would be delivered.

20 50. Declarations under this Act—(1) Every declaration required or authorised by this Act shall be made in the prescribed form.

(2) Where by any such form it is indicated that the declaration shall be made before any person, then it may be made before the Comptroller or any Collector or other officer of Customs, or before any postmaster or person for the time
25 being lawfully acting in the place of a postmaster, or before any person authorised under the Oaths and Declarations Act 1957 to take declarations, or before any such other person as may be prescribed.

30 51. General provisions as to Orders in Council and regulations—Without limiting the Acts Interpretation Act 1924, no Order in Council or regulation under this Act shall be invalid because it leaves any matter to the discretion of the Minister or of any other person, or because it authorises the Minister or any other person to give any consent or to issue any licence,
35 permit, or other instrument on or subject to conditions to be imposed or approved by the Minister.

40 52. Power of Comptroller to prescribe forms—(1) For the purposes of this Act the Comptroller may from time to time prescribe any forms that are not otherwise specifically prescribed.

(2) The production of any document under the hand of a Collector purporting to be a prescribed form or an extract from a prescribed form or a copy of any such form or extract shall in all Courts and in all proceedings be sufficient evidence of the fact that the form was prescribed; and all Courts shall in all proceedings take judicial notice of the signature of the Collector either to the prescribed form or to any such extract or copy. 5

53. Regulations—The Governor-General may from time to time by Order in Council make regulations for all or any of the following purposes: 10

- (a) Prescribing forms for any of the purposes of this Act:
- (b) Prescribing matters in respect of which fees and charges are to be payable under this Act or under the regulations, the amounts of the fees and charges, and the persons liable to pay them: 15
- (c) Prescribing and regulating the provision, keeping, maintenance, alteration, use, and inspection of any buildings, plant, equipment, apparatus, tanks, containers, or materials in a brewery, depot, or bottling store, or other premises for the purposes of this Act: 20
- (d) Prescribing and regulating procedures to be followed in any brewing process; and in the bottling, packing, repacking, storage, removal, conveyance, or delivery of beer: 25
- (e) Providing for the making of entries, returns, and declarations for any of the purposes of this Act or of the regulations:
- (f) Prescribing the conditions and restrictions under which the provisions applicable to drawbacks of duty under the Customs Act 1966 apply to drawbacks of beer duty on beer exported from New Zealand: 30
- (g) Prescribing the conditions and restrictions under which the provisions applicable to refunds and remissions of beer duty apply for the purposes of this Act: 35
- (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 offence. 40

Cf. 1915, No. 39, s. 36

54. **Transitional provisions as to liability for beer duty**—Duty shall be paid on all beer delivered from a brewery before the commencement of this Act in the same manner in all respects as if this Act had not been passed.

5 55. **Consequential amendments**—The enactments specified in the Second Schedule to this Act are hereby amended in the manner indicated in that Schedule.

56. **Repeals**—The enactments specified in the Third Schedule to this Act are hereby repealed.

SCHEDULES

FIRST SCHEDULE

Section 15

RATES OF BEER DUTY

Beer not exceeding 4.35 percent alcohol by volume	15.94 cents per litre
Beer exceeding 4.35 percent but not exceeding 5.00 percent alcohol by volume	19.93 cents per litre
Beer exceeding 5.00 percent alcohol by volume	25.10 cents per litre

SECOND SCHEDULE

Section 54

ENACTMENTS AMENDED

Title of Act	Amendment
1962, No. 139—The Sale of Liquor Act 1962	<p>By repealing subsection (2) of section 10, and substituting the following subsection: “(2) The Commission shall have the functions relating to brewers’ licences conferred on it by the Beer Duty Act 1977.”</p> <p>By omitting from section 16 (1) the words “Part III of the Finance Act 1915”, and substituting the words “the Beer Duty Act 1977”.</p> <p>By omitting from section 67 (2A) the words “the Finance Act 1915”, and substituting the words “the Beer Duty Act 1977”.</p> <p>By omitting from section 222 (1) the words “the Finance Act 1915”, and substituting the words “the Beer Duty Act 1977”.</p> <p>By omitting from section 234 the words “Part III of the Finance Act 1915”, and substituting the words “the Beer Duty Act 1977”.</p> <p>By omitting from section 237 the words “Part III of the Finance Act 1915”, and substituting the words “the Beer Duty Act 1977”.</p> <p>By omitting from section 259 (1) the words “the Finance Act 1915”, and substituting the words “the Beer Duty Act 1977”.</p> <p>By omitting from section 260 the words “Part III of the Finance Act 1915”, and substituting the words “the Beer Duty Act 1977”.</p>
1966, No. 19—The Customs Act 1966	<p>By repealing subsections (2) and (3) of section 301.</p> <p>By repealing so much of the Fifth Schedule as relates to the Finance Act 1915.</p> <p>By repealing paragraph (c) of section 3 (1), and substituting the following paragraph: “(c) The Beer Duty Act 1977.”</p> <p>By repealing section 186.</p>

THIRD SCHEDULE

Section 55

ENACTMENTS REPEALED

- 1915, No. 39—The Finance Act 1915. (1957 Reprint, Vol. 5, p. 1.)
1917, No. 9—The Finance Act 1917. (1957 Reprint, Vol. 5, p. 24.)
1930, No. 5—The Customs Acts Amendment Act 1930. (1957 Reprint, Vol. 5, p. 25.)
1931, No. 30—The Customs Acts Amendment Act 1931. (1957 Reprint, Vol. 5, p. 25.)
1934, No. 14—The Customs Acts Amendment Act 1934. (1957 Reprint, Vol. 5, p. 26.)
1940, No. 19—The Finance Act (No. 2) 1940: Section 5. (1957 Reprint, Vol. 5, p. 27.)
1947, No. 29—The Customs Acts Amendment Act 1947. (1957 Reprint, Vol. 5, p. 27.)
1958, No. 33—The Customs Acts Amendment Act 1958.
1964, No. 62—The Customs Acts Amendment Act 1964.
1974, No. 4—The Customs Acts Amendment Act 1974: Part II and the Third Schedule.
1976, No. 142—The Customs Acts Amendment Act (No. 2) 1976: Part III.
1977, No. 16—The Customs Acts Amendment Act 1977: Part III.