



THE LICENSING ACT EMERGENCY REGULATIONS 1942 (NO. 2)

C. L. N. NEWALL, Governor-General.

ORDER IN COUNCIL.

At the Government House at Wellington, this 22nd day of
June, 1942.

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

PURSUANT to the Emergency Regulations Act, 1939, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS.

1. (1) These regulations may be cited as the Licensing Act Emergency Regulations 1942 (No. 2).

(2) These regulations shall come into force on the day following the day on which notification of the making thereof is published in the *Gazette*.*

(3) For the purposes of the general interpretation hereof, unless the context otherwise requires, expressions used in these regulations shall have the same meaning as in the Licensing Act, 1908†.

(4) The Licensing Act Emergency Regulations 1939‡, the Supply of Liquor to Soldiers Emergency Regulations 1940§, and the Licensing Act Emergency Regulations 1942|| are hereby revoked.

(5) All certificates and transfers and all seizures and generally all acts of authority that originated under the provisions of any of the regulations hereby revoked and are subsisting or in force at the commencement of these regulations shall enure for the purpose of these regulations as if they had originated under the corresponding provisions of these regulations, and accordingly shall, where necessary, be deemed to have so originated.

Restriction on Sale and Consumption of Intoxicating Liquor.

2. (1) While these regulations continue in force, the Licensing Act, 1908, and all licenses thereunder, and all other Acts relating to the sale of intoxicating liquor, shall, notwithstanding anything to the

* See end note.

† See Reprint of Statutes, Vol. IV, page 234.

‡ Statutory Regulations 1939, Serial number 1939/205, page 850.

§ Statutory Regulations 1940, Serial number 1940/39, page 90.

|| Statutory Regulations 1942, Serial number 1942/27, page 78.

contrary therein, be read and construed as if section 189 of the Licensing Act, 1908, had been amended by repealing subsection (1), and substituting the following subsection:—

“(1) Subject as hereinafter mentioned, all licensed premises shall be closed as follows, that is to say:—

“(a) On Saturday, from 2 o’clock to 4 o’clock of the afternoon and from 6 o’clock of the evening until 10 o’clock of the following Monday morning:

“(b) On the nights of all other days, from 6 o’clock until 10 o’clock of the following morning.”

(2) Nothing in subclause (1) of this regulation shall be deemed to affect the hours during which liquor may be sold or offered for sale pursuant to a conditional license.

(3) Nothing in these regulations shall be deemed to affect the provisions of section 8 of the Sale of Liquor Restriction Act, 1917.*

(4) Notwithstanding anything in these regulations or in section 11 of the Licensing Amendment Act, 1914†, it shall be lawful for the holder of a wine-maker’s license under that section to sell or deliver wine of his own manufacture pursuant to the terms of that license at any time when the holder of a wholesale license may sell or deliver liquor.

3. (1) Subject as hereinafter provided, every person who, at any time while licensed premises are required to be closed, sells or supplies any liquor or exposes any liquor for sale in any licensed premises or chartered club, or opens or keeps open any such premises or club for the sale of liquor, or allows any liquor, whether purchased before or after the hours of closing, to be consumed in any such premises or club or to be removed from any such premises or club, commits an offence and is liable on summary conviction to a fine of not less than £10 and not more than £100.

(2) Every person who, at any time while licensed premises are required to be closed, purchases any liquor or consumes any liquor in any licensed premises or in any chartered club, or removes any liquor, whether purchased before or after the hours of closing, from any such premises or club, commits an offence and is liable on summary conviction to a fine of not less than £2 and not more than £10.

(3) Nothing in the foregoing provisions of this regulation shall render unlawful the sale of liquor in accordance with section 191 of the Licensing Act, 1908, or the sale or consumption of liquor in accordance with section 10 of the Sale of Liquor Restriction Act, 1917,* or the consumption of liquor in any licensed premises by any lodger therein or his *bona fide* guest or by the licensee or any member of his family or any of his servants.

(4) No licensee shall at any time while licensed premises are required to be closed sell liquor to any lodger pursuant to section 191 of the Licensing Act, 1908, except in accordance with a written order signed by the lodger setting out particulars of the liquor ordered by him.

(5) All such written orders as aforesaid shall be kept in booklets, which shall at the time the orders are signed state the date and the time of each order.

* See Reprint of Statutes, Vol. IV, page 373.

† *Ibid.*, page 369.

(6) Any licensee who fails to comply with the requirements of sub-clause (4) or subclause (5) of this regulation commits an offence and is liable on summary conviction to a fine not exceeding £10.

(7) If in any prosecution for an offence against any of the provisions of this regulation it is proved or admitted that any liquor was consumed or had been sold or supplied in any licensed premises at any time while the premises were required to be closed, the burden of proving that the liquor was not consumed or sold or supplied in contravention of those provisions shall be upon the defendant.

4. (1) Every person who, in any railway train, rail car, tramcar, omnibus, service-car, taxicab, or other vehicle for the time being used for the carriage for hire or reward of members of the public or members of any armed force—

(a) Drinks any intoxicating liquor ; or

(b) Supplies any intoxicating liquor to any person for consumption therein ; or

(c) Has possession or control of any intoxicating liquor intended for consumption therein,—

commits an offence and is liable on summary conviction to a fine not exceeding £20.

(2) If in any prosecution for an offence against this regulation it is proved or admitted that any person in any vehicle as aforesaid had possession or control of any intoxicating liquor, the burden of proving that the liquor was not intended for consumption therein shall be upon the defendant.

(3) Any constable may seize and remove any liquor which there is reasonable ground to suppose is intended for consumption in contravention of subclause (1) of this regulation, and the vessels containing the liquor.

(4) Where in any district in which the provisions of section 43 of the Licensing Amendment Act, 1910,* apply, a Native, within the meaning of that section, is a passenger in any omnibus, service-car, taxicab, or other vehicle licensed to carry passengers and the driver of the vehicle has in his possession or control in the vehicle or knowingly permits any passenger (whether a Native or not) to have in his possession or control in the vehicle any intoxicating liquor, the driver commits an offence and is liable on summary conviction to a fine not exceeding £20 :

Provided that it shall be a good defence if it is proved that the liquor had not been supplied, and was not intended to be supplied, to any Native in breach of the said section 43.

5. (1) No person shall sell or supply any intoxicating liquor to a member of an armed force when he is in uniform for consumption elsewhere than on the premises where it is sold or supplied :

Provided that nothing in this subclause shall be deemed to prohibit the sale or supply of liquor to a member of an armed force if the liquor is to be delivered at his place of residence by the person selling or supplying the liquor or is to be delivered at a ship, camp, or station of an armed force for use in any mess or canteen conducted therein.

(2) No person shall act as agent for the purchase of any intoxicating liquor for a member of an armed force when he is in uniform, unless the liquor is to be consumed on the premises where it is purchased

* See Reprint of Statutes, Vol. IV, page 361.

or is to be delivered at his place of residence or is required for use in any mess or canteen conducted in any ship, camp, or station of an armed force.

(3) Any person who commits an offence against this regulation is liable on summary conviction to a fine not exceeding £20.

(4) For the purposes of this regulation and of Regulation 6 hereof the expression "member of an armed force" includes any member of any of His Majesty's naval, military, or air forces and any member of any other armed force who is for the time being lawfully in New Zealand.

6. In any case where any competent naval, military, or air force authority has declared any licensed premises, or any area in which any licensed premises are situated, to be out of bounds for any members of an armed force, or has otherwise ordered that no member of an armed force shall go there, and the licensee has been given written notice thereof, the licensee commits an offence and is liable on summary conviction to a fine not exceeding £20 if he sells or supplies liquor to any member of that force.

7. (1) Every person who—

- (a) Drinks any intoxicating liquor while engaged, pursuant to the Emergency Reserve Corps Regulations 1941,* or any regulations enacted in amendment thereof or in substitution thereof, in any fire-watching duty; or
- (b) Has possession or control of any intoxicating liquor intended for consumption by any person while so engaged; or
- (c) Supplies any intoxicating liquor to any person who is so engaged,—

commits an offence and is liable on summary conviction to a fine not exceeding £10.

(2) If in any prosecution for an offence against this regulation it is proved or admitted that any person while engaged in any such fire-watching duty as aforesaid had possession or control of any intoxicating liquor, the burden of proving that the liquor was not intended for consumption by any person engaged on fire-watching duty shall be upon the defendant.

(3) Any constable may seize and remove any liquor which there is reasonable ground to suppose is intended for consumption in contravention of this regulation, and the vessels containing the liquor.

Cancellation of Publicans' Licenses.

8. Any Superintendent or Inspector of Police may, with the approval of the Commissioner of Police, make application to a Magistrate, in the form No. 1 in the Schedule hereto, for the cancellation of any publican's license on any of the grounds following, namely:—

- (a) That the licensee has committed a breach of the Licensing Act, 1908, or of these regulations, or that he has committed a breach of any of the conditions of his license; or
- (b) That he has permitted the licensed premises to be frequented by disorderly or disreputable persons; or
- (c) That he has failed to conduct the licensed premises in a proper manner, or that drunkenness is permitted therein; or

* Statutory Regulations 1941, Serial number 1941/194, page 585.

- (d) That he has permitted the licensed premises to be used for the illegal sale of liquor at unauthorized times, or has allowed unauthorized persons to frequent the premises during a period when such premises are required to be closed; or
- (e) That for any other reason (to be specified in the application) the licensee is not a fit and proper person to be the holder of such license.

9. (1) The applicant shall serve upon the licensee a notice, in the form No. 2 in the Schedule hereto, calling upon him to appear before the Magistrate at the time and place specified in the said notice to show cause why his license should not be cancelled on the ground or on any of the grounds specified in the notice. A copy of such notice shall also be served upon the owner of the licensed premises, who shall be deemed to be a party to the proceedings.

(2) Not less than ten clear days' notice in writing shall be given to the licensee and the owner of the time and place fixed for the hearing of the application.

(3) Every application under Regulation 8 hereof shall be deemed to be an originating application within the meaning of the Rules of Court relating to originating applications and, subject to these regulations, those rules shall apply accordingly.

10. Upon the conclusion of the hearing of the application, the Magistrate may, on all or any of the grounds stated in the application, if in his opinion it is advisable so to do in the public interest make an order,—

- (a) Cancelling the license in respect of which the application is made;
- (b) That no license shall thereafter be granted in respect of the premises held under the license for such period not exceeding two years as he may direct.

11. (1) Any party may appeal to the Supreme Court against any order made under Regulation 10 hereof:

Provided that the appellant gives notice of the appeal within seven days after the making of the order.

(2) Notice of appeal shall be in writing and shall be filed in the Supreme Court. A copy of the notice of appeal shall be served on each of the other parties to the application, and a copy of the notice of appeal shall be left with the Clerk of the Magistrate's Court where the order appealed from was made. It shall not be necessary to state in the notice of appeal the grounds of appeal.

(3) The operation of the order appealed from shall be suspended until the final determination of the appeal.

(4) Every appeal under this regulation shall be by way of a rehearing of the original proceedings, in like manner as if the proceedings had been properly and duly commenced in the Supreme Court, and that Court may confirm, modify, or revoke the order appealed from.

(5) If the appellant does not prosecute his appeal with due diligence any other party to the proceedings may apply to the Supreme Court for the dismissal of the appeal.

12. (1) On the cancellation of a license under Regulation 10 hereof the Chairman and any two members of the appropriate Licensing Committee, with the approval of the owner of the licensed premises

and of the Superintendent or Inspector of Police, shall, unless an order has been made disqualifying the premises from receiving a license for any period, grant a temporary license in respect of the premises to some fit and proper person to hold the same until the next succeeding quarterly meeting of the Committee; and at that meeting, or as soon as possible thereafter, the Committee shall consider and dispose of any application for a new license in respect of the premises and shall not fail to grant a new license in respect thereof if any applicant therefor is approved for the purpose by the owner of the premises and the Superintendent or Inspector of Police.

(2) If an order is made under Regulation 10 hereof disqualifying any premises from receiving a license for any period, the license cancelled by the Magistrate shall not until the expiration of the period of disqualification be deemed for the purposes of section 30 of the Licensing Amendment Act, 1910, to have been forfeited, or not to have been renewed, or to have otherwise ceased to exist.

(3) In any case where an order has been made under Regulation 10 hereof disqualifying any premises from receiving a license for any period, the Chairman and two members of the appropriate Licensing Committee, with the approval of the owner and of a Superintendent or Inspector of Police, shall at the expiration of that period grant a temporary license in respect of the premises to some fit and proper person to hold the same until the next succeeding quarterly meeting of the Committee; and at that meeting, or as soon as possible thereafter, the Committee shall consider and dispose of any application for a new license in respect of the premises and shall not fail to grant a new license in respect thereof if any applicant therefor is approved for the purpose by the owner of the premises and the Superintendent or Inspector of Police.

(4) In any case where a temporary license has been granted under the foregoing provisions of this regulation within the twenty-eight days immediately preceding a quarterly meeting of the Licensing Committee it shall not be necessary for the applicant for the new license to comply with the provisions of section 84 (1) of the Licensing Act, 1908.

13. (1) Upon the cancellation of any license under these regulations, if the licensee is not the owner of the licensed premises the Chairman of the Licensing Committee may, on the request of the owner of the premises, order the licensee to vacate those premises. If the licensee makes default in vacating the premises pursuant to the said order, he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £5 for each day during which such default continues, or to both such imprisonment and such fine.

(2) If the licensee is a lessee or sub-lessee of the licensed premises, the Chairman may, on the request of the lessor or sub-lessor, execute in the name and on behalf of the licensee an assignment or surrender of the lease or sublease, and such assignment or surrender shall have the same effect as if it were executed by the licensee himself.

(3) Nothing in this regulation shall derogate from any other rights or remedies of the owner against the licensee.

Miscellaneous.

14. Notwithstanding anything to the contrary in section 72 of the Licensing Act, 1908, or in any other enactment, any married woman whose husband is for the time being either rendering continuous service as a member of any of His Majesty's naval, military, or air forces or prevented from performing the duties of a licensee by his compliance with any requirements, orders, or directions made or given under any emergency regulations within the meaning of the Emergency Regulations Act, 1939, may, if the Licensing Committee thinks fit, hold a license under the Licensing Act, 1908 :

Provided that if the married woman is not qualified under the provisions of that Act to hold a license the Licensing Committee may require the license to be transferred to the husband on his discharge from such service or, as the case may be, on his being no longer so prevented from performing the duties of a licensee.

15. The provisions of the Licensing Act, 1908, relating to the maintenance of premises at the standard required by that Act shall not apply to prevent the granting of any application for the renewal of a publican's license, or for a new publican's license, in any case where the Licensing Committee is satisfied that the failure to maintain the premises at the required standard or to provide the required accommodation is due to the present war or to conditions directly or indirectly created thereby.

16. While these regulations continue in force licensed premises may be closed under the authority of section 7 of the Sale of Liquor Restriction Act, 1917,* notwithstanding that they may have been previously closed under the authority of that section.

17. (1) It shall not be lawful for any person to enter into any contract relating to the management or control of any premises in respect of which a publican's license has been granted if the contract provides for the payment of remuneration to any person at a rate, or at rates, determined or affected by reference, directly or indirectly, to the amount of intoxicating liquor sold in the premises or to the profits of the business carried on therein.

(2) Any such contract as aforesaid entered into before the commencement of these regulations shall be adjusted so as to provide for the payment of remuneration at a rate, or at rates, which are not determined or affected by reference, directly or indirectly, to the amount of intoxicating liquor sold in the premises or to the profits of the business carried on therein.

(3) If the parties to any such contract as aforesaid entered into before the commencement of these regulations cannot agree upon the adjustment thereof as required by subclause (2) of this regulation, the matter shall be referred to the arbitration of one arbitrator if the parties can agree upon one, otherwise to two arbitrators, one to be appointed by the party or parties who are to receive remuneration under the contract and the other by the other party or parties thereto, under the provisions of the Arbitration Act, 1908.

18. (1) No person shall publish or cause to be published in any newspaper (other than a newspaper circulating exclusively or principally among persons engaged in trade or commerce) any advertisement relating to any intoxicating liquor, if the advertisement exceeds 2½ in. in width and 2 in. in length.

* See Reprint of Statutes, Vol. IV, page 372.

(2) No person shall publish or cause to be published in any manner whatsoever any advertisement relating to intoxicating liquor which illustrates the drinking of liquor by women or which is calculated to, or which may in any manner whatsoever, encourage or increase the consumption of intoxicating liquor by women in particular.

(3) No person shall publish or display or cause to be published or displayed in any manner so that it shall be visible from any road, street, or public place any poster, placard, handbill, writing, picture, or device advertising any intoxicating liquor :

Provided that nothing in this subclause shall apply to the publication or display of any poster, placard, handbill, writing, picture, or device in or upon any premises where intoxicating liquor is manufactured or sold.

(4) No person shall display or cause to be displayed in any theatre, or publish or cause to be published by means of a broadcast from a wireless transmitting station, any advertisement relating to intoxicating liquor.

(5) Nothing in this regulation shall be deemed to prohibit the publication or display at any time before the 1st day of September, 1942, of any advertisement relating to intoxicating liquor if the advertisement is published or displayed in pursuance of a contract made before the commencement of these regulations.

(6) Any person who commits a breach of this regulation shall be liable on summary conviction to a fine not exceeding £100.

(7) For the purposes of this regulation the term "newspaper" includes every paper, pamphlet, magazine, or other document published at intervals.

(8) Any contract relating to the publication or display of advertisements relating to intoxicating liquor the performance of which is affected or prohibited by the provisions of this regulation shall, on the application of either party thereto, be varied in such manner as may be just and equitable in the circumstances. If any dispute arises as to whether any, and, if so, what, variation should be made in any contract as aforesaid, the dispute shall be referred to the arbitration of one arbitrator if the parties can agree upon one, otherwise to two arbitrators, one to be appointed by each party to the dispute, under the provisions of the Arbitration Act, 1908.

19. Any person who sells or keeps for sale or exposes for sale any material that is packed, measured, combined, compounded, or designed for the purpose of enabling any person who is not the holder of a brewer's license to make intoxicating liquor commits an offence and shall be liable on summary conviction to a fine not exceeding £10.

20. (1) Any constable may at all times by day or night and on any day of the week enter without warrant upon any unlicensed premises in which he reasonably suspects any offence against the provisions of the Licensing Act, 1908, relating to the sale, exposure, or keeping for sale of intoxicating liquor by unlicensed persons or in unlicensed premises has been or is about to be committed, and may search the premises and every part thereof and may seize any intoxicating liquor found therein and the vessels containing the liquor.

(2) Sections 230, 231, and 232 of the Licensing Act, 1908, are hereby extended to apply in any case where any constable has pursuant to this regulation without warrant entered any premises and seized any liquor therein.

(3) Every person who resists, obstructs, or hinders any constable in the exercise of the powers conferred upon him by this regulation or who fails or refuses to afford to a constable immediate entrance to any such place or to any part thereof shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £50.

21. If in any prosecution for the sale, exposure, or keeping for sale of intoxicating liquor by an unlicensed person or in unlicensed premises the evidence produced by the informant or the facts admitted by the defendant are sufficient to constitute a reasonable cause of suspicion that the defendant is guilty of the offence charged, the burden of proving that the offence was not committed shall be upon the defendant.

22. When any intoxicating liquor or vessels have been seized under these regulations, then upon the conviction for an offence under the Licensing Act, 1908, or these regulations of any person appearing to the Court to be an owner or to have been in possession thereof or to be an owner or occupier of the place where the liquor or vessels were seized, the Court, unless on any special grounds it thinks it inadvisable so to do, shall make an order declaring that the liquor or vessels are forfeited to His Majesty, and upon the making of an order of forfeiture the provisions of section 143 of the Licensing Act, 1908, shall apply.

23. (1) Every innkeeper shall keep a register, in which he shall enter or cause to be entered the name and address of, and particulars of the accommodation allocated to, every person who is lodging in the premises.

(2) The entry in the register in respect of each lodger shall be made in ink immediately he becomes a lodger.

(3) Every innkeeper shall upon demand allow the register to be inspected by any constable.

(4) Every innkeeper who fails to comply with the provisions of this regulation or who makes or causes to be made in the register any false entry commits an offence and shall be liable on summary conviction to a fine not exceeding £50.

24. (1) Every person who is the holder of a wholesale license or a brewer's license or a wine-maker's license shall keep a record of every sale of liquor made by him :

Provided that it shall not be necessary to keep a record of any sale to any person lawfully entitled to sell liquor or of any sale of liquor for delivery at any building, vessel, or place at or upon which liquor may lawfully be sold.

(2) The record required by this regulation shall be kept in a book and shall show the date of each sale, the name and address of each purchaser, and the nature and quantity of the liquor sold to him.

(3) Every sale required to be recorded shall be entered in the record on the day on which the sale is made.

(4) Every person required to keep a record of sales of liquor as aforesaid shall upon demand allow the record to be inspected by any constable.

(5) Any person who fails to comply with the provisions of this regulation commits an offence and is liable on summary conviction to a fine not exceeding £50.

SCHEDULE.

[Form No. 1.

Under the Licensing Act Emergency Regulations 1942 (No. 2).

APPLICATION TO A MAGISTRATE FOR CANCELLATION OF PUBLICAN'S LICENSE.

To the Magistrate at

I HEREBY apply, pursuant to the Licensing Act Emergency Regulations 1942 (No. 2), for the cancellation of the publican's license held by [Name of licensee] in respect of the premises known as [Name by which premises known], situated at [State location of premises], on the grounds following, namely: [Set out in detail the grounds on which the application is made].

Dated at, this day of, 19..

.....
Superintendent of Police.
or Inspector of Police.

[Endorsement.]

APPROVAL BY COMMISSIONER OF POLICE.

I HEREBY approve the application herein.

Dated at, this day of, 19..

.....
Commissioner of Police.

[Form No. 2.

Under the Licensing Act Emergency Regulations 1942 (No. 2).

NOTICE TO HOLDER OF PUBLICAN'S LICENSE TO SHOW CAUSE WHY HIS LICENSE SHOULD NOT BE CANCELLED.

To [Name and address of licensee].

TAKE notice that you are hereby required and directed to appear before the Magistrate at the Magistrates' Court at, on, the day of, 19.., at o'clock in the noon, to show cause why the publican's license held by you in respect of the licensed premises known as [Name by which premises known], situated at should not be cancelled on all or any of the grounds following, namely: [Set out in detail the grounds on which the application is made].

Dated at, this day of, 19..

.....
Superintendent of Police.
or Inspector of Police.

NOTE.—A copy of this notice is to be served also upon the owner of the licensed premises.

C. A. JEFFERY,
Clerk of the Executive Council.

Issued under the authority of the Regulations Act, 1936.
Date of notification in *Gazette*: 22nd day of June, 1942.