



THE NIUE AUDIT REGULATIONS 1970

RICHARD WILD, Administrator of the Government

ORDER IN COUNCIL

At the Government House at Wellington this 25th day of May 1970

Present:

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL

PURSUANT to the Niue Act 1966, His Excellency the Administrator of the Government, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

1. Title—These regulations may be cited as the Niue Audit Regulations 1970.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“Accounting officer” means an imprestee, receiver, or other person who is required to render an account under any enactment or appointment; and includes every person who, by any enactment or by virtue of any appointment, is charged with the duty of collecting or receiving, or who does actually collect or receive, any public money, or who is charged with the duty of disbursing, or who does actually disburse, any public money, or who is charged with the purchase, receipt, custody, or disposal of or the accounting for any public stores:

“The Act” means the Niue Act 1966:

“Audit Office” means the Controller and Auditor-General holding office under the Public Revenues Act 1953; and that expression and also the expression “Controller and Auditor-General” include any person for the time being authorised to exercise or perform any of the powers, duties, or functions of the Controller and Auditor-General:

“Financial year” means a period of 12 months ending with the 31st day of March:

“Government” means the Government of Niue:

“Imprestee” means any person in whose hands any public money is placed for expenditure in the public service:

“Local authority” means any Council, Board, Trustees, Commissioners, or other persons, by whatever name designated, entrusted by or under authority of any enactment with the administration of the affairs of any municipality, district, or village and having power to levy rates or taxes or to impose fines or penalties:

“Public money” means money, or securities of any kind for the payment of money, received for or on account of, or payable to, or belonging to, or deposited with, the Crown or the Government or any Department or agency of the Government; and includes public securities:

“Public Revenues Ordinance” means the Public Revenues Ordinance 1959 of Niue; and includes any Ordinance passed by the Island Assembly in amendment of or substitution for that Ordinance:

“Public securities” means securities representing the investment of any public money:

“Public stores” or “stores” means chattels, machinery, livestock, or buildings in the possession or under the control of any Department or agency on account of the Government:

“Statutory authority” means any Council, Board, Trustees, Commissioners, or any other persons, by whatever name designated, entrusted with the administration of any scheme, trust, fund, or other undertaking of a public nature established by or under the authority of any enactment:

“Treasurer” means the Treasurer of Niue.

Expressions defined in the Act have the meanings so defined.

3. Inspection and audit—(1) The Audit Office shall at such times as it thinks fit inspect, examine, and audit the books and accounts of every accounting officer, and of every other person concerned in the accounting, collection, receipt, custody, or expenditure of public money or stores.

(2) The Audit Office shall have free access at all convenient times to the accounts and records relating to any public money or stores and to the offices or premises in which any such accounts or records are located; and it shall be the duty of all persons whomsoever to afford all such information as the Audit Office at any time requires, and to answer all such questions as may be addressed to them or any of them by the Audit Office touching any public money or stores, or any account thereof, or any other matter which may enable the Audit Office to fulfil the duties imposed on it by these regulations.

(3) The Audit Office may, whenever it thinks fit, cause search to be made in and extracts taken from any book, document, or record in any public office without paying any fee therefor.

(4) The Audit Office shall make such examination, reviews, and tests as it considers necessary of the accounts and transactions relating to any public money and stores to ascertain whether, in the opinion of the Audit Office—

(a) The accounts have been faithfully and properly kept:

(b) Internal controls and procedures applied are sufficient to ensure that all money is accounted for and to secure an effective check on the assessment, collection, and proper allocation of revenue:

(c) Internal controls and procedures applied are sufficient to secure an effective control over expenditure, and to ensure that expenditure has been properly authorised and charged against the proper appropriation provided by the Island Assembly:

(d) Internal controls and procedures applied are adequate for proper custody and control of stores and for the maintenance of essential stores records.

(5) The provisions of this regulation shall, with the necessary modifications, apply to all accounts and transactions in respect of money or stores required to be audited by the Audit Office under any enactment.

4. Inspectors—The Controller and Auditor-General may from time to time, by writing under his hand, appoint any officer of the Audit Department or other fit person to inspect, examine, or audit any books, accounts, or stores which are required to be inspected, examined, or audited by these regulations or by any other enactment and to report thereon to him; and for the purposes of any such inspection and report any such officer or other person shall have power to inspect all books, accounts, vouchers, and other papers relating thereto.

5. Audit Office may report to Minister—(1) The Audit Office may communicate with the Minister or any other person whomsoever upon any account or transaction subject to audit by the Audit Office under these regulations or any other enactment.

(2) The Audit Office may report to the Minister the name of any person failing to comply with the requirements of these regulations, or of any other enactment relating to public money or public stores, and thereupon, and until the failure is made good to the satisfaction of the Minister, all salaries and money that may be or become due to that person may be withheld.

6. Controller and Auditor-General's precept—(1) The Controller and Auditor-General may, by precept under his hand, require any such person as he thinks fit to appear personally before him or any officer of the Audit Department, at a time and place to be named in the precept, and to produce any accounts, vouchers, books, or papers in the possession or control of that person.

(2) The Controller and Auditor-General or officer of the Audit Department shall have full power to examine any such person on oath touching the receipt, expenditure of or otherwise dealing with any

public money or stores, and touching all other matters necessary for the due execution of the powers vested in the Audit Office by these regulations.

(3) Every person who is compelled under the provisions of this regulation to attend before the Audit Office shall be entitled to be paid from the Niue Assembly Account such expenses as the Audit Office certifies to be reasonable.

7. Surcharges—(1) If it appears to the Audit Office that in any account or transaction subject to its audit there has been any deficiency or loss, or that any money has not been fully and properly accounted for, by reason of the fact that—

- (a) Any accounting officer or other person has wilfully or negligently omitted to collect, receive, or account for any money; or
- (b) Any money has been applied and charged to any service or purpose for which it was not legally available and applicable; or
- (c) Any payment has been made without proper authority or has not been duly vouched; or
- (d) There has been a deficiency or loss of money or stores, or expenditure of money, or damage to stores, or expenditure for the replacement or repair of stores, caused through the fraud, mistake, default, negligence, or error of, or improper or unauthorised use by, any person; or
- (e) Any material error has been committed; or
- (f) Any of the provisions of these regulations, or of any other enactment relating to public money or public stores, have not been complied with,—

the Controller and Auditor-General may call on the person who appears to him to be in default or responsible to show cause why he should not be surcharged with the amount of the deficiency or loss, notifying that person in writing of the proposed surcharge and of the time within which he is required to state why he should not be surcharged.

(2) In any case in which the amount of any deficiency or loss cannot be accurately determined, the Controller and Auditor-General shall make an estimate of the deficiency or loss, and that estimate shall for all purposes be deemed to be correct.

(3) On receipt of any explanation submitted by any person who has been called on to show cause why he should not be surcharged, or in default of any such explanation, the Controller and Auditor-General shall, if he considers the circumstances warrant it, issue a surcharge for the amount concerned. The person surcharged shall be notified by the Controller and Auditor-General of the time within which the surcharge must be satisfied.

(4) Any surcharge unsatisfied within the time so allowed shall be reported by the Controller and Auditor-General to the Minister, to be by him enforced against the person surcharged.

(5) The Controller and Auditor-General may at any time revoke any surcharge made by him under this regulation if he considers it to have been made in error.

(6) Nothing in this regulation shall prevent the recovery without surcharge, from any person liable to be surcharged, of the amount of the deficiency or loss, or of so much thereof as the Controller and Auditor-General thinks fit, as a debt due to the Crown.

(7) If any person having possession or control of any public money or stores applies the same, or causes or permits the same or any part thereof to be applied, to other than public services, or is a defaulter in respect of any such money or stores, the Audit Office shall forthwith take all such steps as it thinks fit to prosecute the offender according to law, but nothing herein shall prevent the prosecution of that person by any person other than the Audit Office.

8. Recovery of surcharges—(1) The Minister, on receiving the Audit Office report of an unsatisfied surcharge, may direct the Resident Commissioner to take such steps to recover the amount as the case may require. No amount payable to or claimed by that person shall be paid until the surcharge has been satisfied, and the amount of the surcharge shall be recoverable from that person as a debt due to the Crown:

Provided that payment of not more than one-fifth of the net salary for any pay period of any officer surcharged shall be withheld under this regulation.

(2) All money recovered under this regulation shall be paid into the account which suffered the deficiency or loss in respect of which the surcharge was issued.

9. Appeal as to surcharges—Any person who has been surcharged and who is dissatisfied with that surcharge may within one month after the date of the service on him of notice of the surcharge appeal to the Minister, who, after making such investigation as he deems equitable, may make such order as he thinks fit either confirming the surcharge or directing the relief of the appellant therefrom either wholly or in part, whereupon the amount of the surcharge which has not been remitted shall become due and payable and subject to the provisions of regulation 8 of these regulations.

10. Passing of payments without receipts—The Resident Commissioner, on satisfactory evidence being provided that the receipts or other requisite papers have been lost or destroyed or that it is not possible to obtain or replace them, may order that any payment of public money be allowed as paid without production of receipts, and the Audit Office may after making such inquiries as it considers desirable pass the payment accordingly.

11. Powers of Audit Office as to payment of royalties—The Audit Office may from time to time inspect and examine the books and accounts of any person who is for the time being liable for the payment to the Crown of any royalties under any lease or licence.

12. Resident Commissioner or Audit Office may investigate accounts in connection with Government contracts—(1) For the purposes of this regulation the term "Government contract" means any contract for the supply of any goods or the execution of any works in consideration of any payment out of public money, and includes any subcontract made in relation to any such contract.

(2) The provisions of this regulation shall apply with respect to any Government contract whether it has been made before or after the making of these regulations, and whether or not the contract has been wholly or partly performed and executed.

(3) For the purpose of obtaining any information in relation to any Government contract, the Resident Commissioner or the Controller and Auditor-General may from time to time—

- (a) Inspect, examine, and audit any books, accounts, vouchers, records, or documents:
- (b) Require any person to produce any books, accounts, vouchers, records, or documents in his possession or under his control, and to allow copies of or extracts from any such books, accounts, vouchers, records, or documents to be made:
- (c) Require any person to furnish, in a form to be approved by or acceptable to the Controller and Auditor-General, any information or particulars that may be required by him:
- (d) Inspect, measure, and test any real or personal property:
- (e) Enter any land, building, or place.

(4) The Resident Commissioner or the Controller and Auditor-General may from time to time, either generally or particularly, delegate to any person or class of persons, or to the holder or holders of any office or class of offices, any of the powers conferred by this regulation. Any such delegation may be at any time revoked.

(5) Every person commits an offence against this regulation who—

- (a) Resists, obstructs, deceives, or attempts to deceive any person who is exercising or attempting to exercise any power or function under this regulation:
- (b) Makes any false or misleading statement or any material omission in any information or particulars furnished under this regulation:
- (c) Fails to comply in any respect with any requirement under this regulation.

(6) Every person who aids, abets, counsels, or procures, or is in any way knowingly concerned with, the commission of an offence against this regulation shall be deemed to have committed an offence against this regulation.

(7) Any offence against this regulation committed by a servant or agent in the course of his employment shall be deemed to have been also committed by his employer or principal.

(8) Every person who commits or attempts to commit an offence against this regulation is liable—

- (a) In the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$100 and (if the offence is a continuing one) to a further fine not exceeding \$10 for every day during which the offence has continued, or to both such imprisonment and such fines:
- (b) In the case of a company or other corporation, to a fine not exceeding \$1,000 and (if the offence is a continuing one) to a further fine not exceeding \$40 for every day during which the offence has continued.

13. Statutory and local authorities—The functions and powers of the Audit Office under these regulations shall extend to the inspection, examination, and audit of the accounts of every statutory authority and every local authority in Niue created, incorporated, or established by any enactment.

14. Audit fees and costs—(1) The cost of the audit of its accounts, public money, and public stores shall be borne by the Government of Niue.

(2) Where the Audit Office is appointed auditor of any body or of any accounts or transactions, whether under these regulations or any other enactment or otherwise howsoever, fees shall be payable to the Audit Office in respect of the audit at such a rate as the Minister of Finance fixes from time to time in accordance with section 31 of the Public Revenues Act 1953.

(3) In addition to the aforesaid fees and costs, the Audit Office shall be reimbursed for all travelling expenses and other disbursements in connection with its duties as prescribed by these regulations.

(4) The amount payable to the Audit Office in respect of any such fees, costs, expenses, or disbursements shall be a debt due to the Crown, and shall be recoverable in any Court of competent jurisdiction.

15. Report of Audit Office—The Resident Commissioner shall on receipt of the report of the Audit Office submitted pursuant to section 20 of the Act, present the report and the statements of accounts or funds which have been audited by the Audit Office together with reports thereon to the Island Assembly forthwith if then meeting, and if not, then at the first sitting of the next meeting.

16. Offences and penalties—(1) Every person who refuses or neglects to pay any public money into the account into which that money is payable is liable to a fine not exceeding \$200.

(2) Every person who refuses or neglects to make any return or furnish any account, vouchers, or other papers which he is required to make or furnish under the provisions of these regulations, not being an offence under regulation 12 of these regulations, is liable to a fine not exceeding \$40.

(3) Every person commits an offence, and is liable to a fine not exceeding \$200, who—

(a) Fails to attend at the time and place required of him by the Controller and Auditor-General or any other person under these regulations for the purpose of being examined; or

(b) Fails to produce any accounts, books, vouchers, or papers in his possession or under his control which he is required to produce; or

(c) Refuses to be sworn or to answer any lawful question asked him by the Resident Commissioner or other person authorised to act in his behalf or by the Audit Office,—

not being an offence under regulation 12 of these regulations.

(4) Every person who is guilty of any wilful act of commission or omission contrary to any of the provisions of these regulations for which no penalty is expressly provided is liable to a fine not exceeding \$100.

(5) All proceedings for an offence against these regulations shall be commenced upon the information of any person appointed by the Resident Commissioner in that behalf, either generally or in any particular case.

17. Regulations ceasing to be in force in Niue—(1) Part V of the Cook Islands Treasury Regulations 1959* shall cease to have effect as part of the law of Niue.

(2) The provisions of the Acts Interpretation Act 1924 shall apply with respect to the regulations specified in subclause (1) of this regulation as if they had been revoked by these regulations.

18. Reserved enactment—These regulations are hereby declared to be a reserved enactment for the purposes of section 38 of the Niue Act 1966.

P. J. BROOKS,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations provide for the audit by the Audit Office of the accounts, public money, and stores of the Government of Niue.

They are in substitution for the existing audit regulations contained in Part V of the Cook Islands Treasury Regulations 1959, which will cease to have effect as part of the law of Niue.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 28 May 1970.

These regulations are administered in the Maori and Island Affairs Department.