



THE NIUE PUBLIC SERVICE REGULATIONS 1979

PURSUANT to section 665 of the Niue Act 1966, the Niue Public Service Commission, with the approval of the Cabinet of Ministers of Niue, hereby makes the following regulations:

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Niue Public Service Regulations 1979.

(2) These regulations shall come into force on the 1st day of May 1979.

2. Interpretation—(1) In these regulations, unless the context otherwise requires,—

“Casual workman” means a person engaged pursuant to the provisions of Part IX of these regulations:

“Commission” means the Niue Public Service Commission established pursuant to Article 64 of the Niue Constitution Act 1974:

“Contract employee” means a person employed under a contract of service under regulation 22 of these regulations:

“Controlling Officer”, in relation to any employee, means the person who is for the time being in charge of that employee and authorised to require him to do or abstain from doing any act or thing in relation to his duties and conduct:

“Department” means each separate organisation of the Service established as such by the Commission:

“Employee” means a person employed in the Service, whether as an officer, probationer, contract employee, or temporary employee; but does not include a person engaged as a casual workman:

“Instructions” means instructions issued by the Commission pursuant to Article 68 (2) of the Niue Constitution Act 1974 or regulation 3 of these regulations:

“Officer” means an employee other than a probationer, a contract employee, or a temporary employee:

“Official Circular” means the Public Service Official Circular, issued by the Commission:

“Probationer” means an employee on probation in accordance with regulation 18 of these regulations:

“Quarters” means any premises made available to an employee by the Government for use as a residence; and includes any area of land occupied in conjunction with the residence:

“Secretary to the Government” means the Secretary to the Government of Niue established pursuant to Article 63 of the Niue Constitution Act 1974:

“The Service” means the Niue Public Service established pursuant to Article 62 of the Niue Constitution Act 1974:

“Service Organisation” means the Niue Public Service Association (Incorporated):

“Temporary employee” means an employee engaged in a temporary capacity under these regulations.

(2) Subject to subclause (1) of this regulation, expressions used in these regulations shall have the same meanings as they have in the Niue Constitution Act 1974 or the Niue Act 1966.

PART I—GENERAL PROVISIONS

3. Instructions—(1) Instructions may be published in the Official Circular or in such other manner as the Commission thinks fit.

(2) Where power is conferred on the Commission by these regulations to determine, prescribe, require, or specify any matter, thing, or act, the Commission may exercise the power by issuing instructions or in any other lawful manner.

(3) The Commission may determine from time to time by instructions issued under this regulation such other conditions of employment as it thinks fit, not being conditions otherwise prescribed by these regulations.

4. Supply of copies of regulations, instructions, and directions—The Commission shall cause sufficient copies of these regulations and of all instructions and written directions to be made available for perusal by employees.

5. Employees to peruse regulations, instructions, and directions—

(1) Every employee shall be deemed to have notice of—

(a) All instructions and directions that have been published in the Official Circular; and

(b) All instructions and written directions of which copies have been made available to him in accordance with regulation 4 of these regulations; and

(c) All other instructions and directions, the contents of which have been actually communicated to him in any other manner.

(2) Ignorance by an employee of any instructions or directions of which he has had notice under subclause (1) of this regulation shall not excuse any breach of those instructions or that direction by him.

6. Notices to employees—Where, under these regulations any notice is required to be given to an employee in respect of any decision or other matter, it shall (except in the case specified in regulation 57 of these regulations) be sufficient compliance with that requirement if the notice is published in the Official Circular or is sent to the employee by letter or telegram addressed to him at his usual place of employment, or at his last known place of abode.

7. Representations to Commission by Service Organisation—(1) The Service Organisation may at all times make representations to the Commission on any matter affecting the conditions of employment of any employee or class or classes of employees.

(2) In making a decision on the matter, the Commission shall have due regard to any representations made by the Service Organisation, in addition to any other considerations that the Commission thinks relevant.

8. Efficiency and economy—The Commission shall take proper measures to procure efficiency and economy in the performance by the Service of its functions, including—

- (a) The application of modern office methods;
- (b) The avoidance of extravagance and waste;
- (c) The control of the volume of work performed;
- (d) The adequate training of employees;
- (e) The maintenance of a proper standard of conduct by employees;
- (f) The encouragement of employees to submit suggestions for increasing the efficiency of the Service or for diminishing the volume of work and cost of the Service.

9. Inspections of departments—(1) The Commission may from time to time as it thinks necessary cause any person or persons (being employed in the Service or otherwise) authorised by it for the purpose to inspect each or any department.

(2) On completing the inspection, the person or persons making the inspection shall—

- (a) Submit to the Commission a written report on the efficiency of each or any department inspected; and
- (b) Specify in the report any changes and measures that are considered necessary to maintain or increase the efficiency of each or any department inspected.

10. Responsibilities of Controlling Officers—(1) The Secretary to the Government shall be responsible to the Commission for the discipline, efficiency, and economical administration of the Service.

(2) Every Head of a department shall be responsible to the Secretary to the Government for the proper management of that department.

(3) Every Controlling Officer in charge of a branch or section of a department shall be responsible to the Head of his department for the proper management of that branch or section.

PART II—APPOINTMENTS, STATUS, AND TENURE OF EMPLOYEES

11. Applications for appointment—Every application for appointment as an employee shall—

- (a) Be in writing; and
- (b) Contain such information as the Commission requires.

12. Educational qualifications for appointment—The Commission may specify a standard or standards of education that shall be required as a minimum educational qualification or qualifications for appointment as an employee to the Service or as an employee to any specified class or classes of position in the Service.

13. Medical examinations—The Commission may require any applicant for appointment as an employee to undergo at his own expense or at the expense of the Commission, a medical examination by a Medical Officer or by a registered medical practitioner nominated by the Commission.

14. Mode of appointment—(1) No appointment of an employee shall be valid unless it is made by the Commission in writing.

(2) The Commission shall, when making an appointment, specify the capacity in which the applicant has been appointed to serve and notify him accordingly.

15. Criteria for appointment—Subject to these regulations, the Commission shall not appoint any person as an employee unless it is satisfied that—

(a) The appointment is necessary; and

(b) In all cases other than appointment as a contract employee, the person appointed has clearly more merit for the position to which he is appointed than any officer who is qualified and available for the position.

16. Permanent staff—(1) The permanent staff of the Service shall consist of every officer and every probationer.

(2) Subject to subclause (5) of this regulation no person shall be appointed to the permanent staff if his age is less than 15 years or more than 55 years.

(3) Subject to subclause (4) and subclause (5) of this regulation no employee who has attained the age of 60 years shall be retained on the permanent staff:

Provided that any member of the permanent staff of the Service who is employed in the Service on or before the date on which these regulations come into force may elect to remain on the permanent staff for such period beyond the age of 60 years, not exceeding 5 years, as he would have been entitled to so remain had these regulations not been enacted.

(4) Notwithstanding the foregoing provisions of this regulation, the Commission may, for the efficiency of the Service and with the consent of an officer, retain him in office beyond the age prescribed where it is deemed necessary in the public interest to do so. Any extension of service under this provision shall be reviewed annually.

(5) Notwithstanding the foregoing provisions of this regulation, the Commission may, for the efficiency of the Service enter into a contract of service for a term not exceeding 5 years with any person who has attained the age of 55 years and is less than 60 years:

Provided that the contract shall be deemed to contain a provision that the contract may be terminated at any time by the Commission on account of serious misconduct of the employee but that the period of employment shall be governed in all other respects by the terms of the contract:

Provided also that the provisions of these regulations shall apply to contract employees under this subclause of this regulation in the same manner as they apply to other employees, except to the extent that they are inconsistent with this subclause of this regulation or with the express terms of the contract of service.

(6) The Commission shall notify every appointment or promotion in respect of which a right of appeal exists under regulation 65 of these regulations.

(7) In making an appointment to a vacant position in the permanent staff, the Commission shall, subject to regulation 15 of these regulations, give preference to the person who in the opinion of the Commission has the most merit for appointment to the position.

(8) The merit of a person for appointment to a vacant position on the permanent staff shall be determined by—

- (a) Work experience and competence shown in performance of duties previously carried out by him (whether in the Service or elsewhere); and
- (b) Personal qualities, characteristics, and attributes relevant to the position to be filled; and
- (c) Relevant educational and other qualifications.

(9) Every appointment to or promotion in the permanent staff shall be provisional until—

- (a) All appeals lodged in accordance with these regulations in respect of the appointment or promotion have been disposed of; or
- (b) Where no such appeals are lodged, the time allowed for the lodging of such appeals has expired.

(10) The Commission may at any time cancel a provisional appointment or promotion.

(11) A provisional appointment or promotion shall be deemed to be cancelled in those cases where the Commission gives effect to a recommendation of the Appeals Committee allowing an appeal against that appointment or promotion.

17. Effective date of appointments and promotions—(1) Any appointment or promotion to a position in the Service may be made with effect from a date to be specified in the instrument of appointment or promotion, whether or not that date is earlier or later than the date on which the power of appointment or promotion is exercised.

(2) When a person is appointed or promoted to a vacant position in the Service, his salary in respect of that position shall be payable from such date (not being earlier than the date on which his appointment or promotion takes effect) as the Commission shall determine.

18. Probation—(1) Every person who is appointed to the permanent staff of the Service shall be on probation for such period, not being less than 6 months or more than 2 years, as the Commission determines.

(2) Notwithstanding subclause (1) of this regulation,—

- (a) An officer of the New Zealand Government Service, who is appointed to the permanent staff of the Niue Public Service; or
- (b) A temporary employee of the Niue Public Service who has been continually employed for not less than 2 years at the date of his appointment to the permanent staff—

shall not be on probation unless the Commission so directs in any particular case or class or classes of cases.

(3) Notwithstanding subclause (1) of this regulation, the Commission may in any particular case determine that any person who is appointed to the permanent staff shall not be on probation.

(4) The Commission may from time to time, by notice in writing to any probationer, extend his period of probation for any specified period not exceeding 12 months at any one time.

(5) The Commission may at any time, in writing, confirm or annul the appointment to the Service of any probationer.

(6) Every such confirmation shall take effect on the date of the instrument of confirmation, or, as the case may be, on such earlier or later date as may be specified in that behalf in the instrument.

(7) Notwithstanding that the period of probation of any probationer may have expired, and whether or not he is appointed to any other position in the Service, he shall, while he remains in the Service, be deemed to be employed on probation until his appointment to the Service is confirmed under this regulation:

Provided that if, at the end of 6 months after the expiration of his period of probation (including any extension of that period), he is still deemed under this subsection to be employed on probation, his appointment to the Service shall then be deemed to be confirmed under this regulation.

19. Termination of employment of officers—(1) Every officer shall be deemed to be a 3-monthly employee, and shall be removable by the Commission at any time after 3 months' notice, or may resign by giving 3 months' notice in writing to the Commission.

(2) The Commission may forthwith terminate the employment of any officer who gives less than 3 months notice under this regulation.

20. Retirement through illness—If, in the opinion of the controlling officer, any officer is inefficient or unable properly to perform the duties of his office through repeated or continuous illness or disability, the matter shall be reported to the Commission, which may have the officer medically examined with a view to his retirement from the Service as being medically unfit for further duty.

21. Temporary employees—(1) Where, in the opinion of the Commission, the interest of the Service so requires, the Commission may appoint, as it thinks fit, temporary employees. Regulation 15 of these regulations shall apply to such appointments.

(2) Subject to regulation 16 of these regulations, any temporary employee may be appointed to the permanent staff at any time.

(3) Every temporary employee shall be removable by the Commission, or may resign at any time, by the giving of 7 days' notice.

22. Contract of service in special cases—(1) The Commission may in any special case enter into a contract of service with any person, other than an employee of the New Zealand Government Service or of the Niue Public Service, for a specified period not exceeding 4 years (such period to include all rights of renewal):

Provided that the contract shall be deemed to contain a provision that the contract may be terminated at any time by the Commission on account of serious misconduct of the employee but that the employment shall be governed in all other respects by the terms of the contract.

(2) The following clause shall be inserted in every contract of service, or where it is not so inserted shall be deemed to have been inserted:

“The provisions of the Niue Public Service Regulations and all instructions issued thereunder shall apply to the contract employee under this contract in the same manner as they apply to other employees except to the extent that they are inconsistent with the terms of the contract (other than in respect of the period of the contract).”

23. Candidature for Niue Assembly or Village Council—(1) Any employee may become a candidate for election to the Niue Assembly or to any Village Council.

(2) When an employee becomes a candidate, he shall forthwith give notice in writing to the Commission of his candidature.

(3) An employee of the Service who becomes a candidate for election as a member of the Assembly shall be placed on leave of absence for the purposes of his candidature on the following terms:

(a) The leave shall commence on a date to be determined by the Commission, being not later than nomination day, and shall continue until the seventh day after polling day, unless he withdraws his candidature:

(b) During the period of his leave he shall not be required or permitted to carry out any of his official duties, except with the consent of the Secretary to the Government, nor shall he be entitled to receive any salary or other remuneration as an employee in respect of that period or any part thereof, except to the extent to which he takes during that period any leave with pay to which he is entitled or to the extent that any such official duties performed have been authorised by the Secretary to the Government.

(4) Except as provided in subclause (3) of this regulation, his rights as an employee shall not be affected by his candidature.

24. Membership of Niue Assembly or Village Council—(1) An employee who has become a candidate for election to the Niue Assembly or to any Village Council shall, after the election has been held, give notice in writing to the Commission stating whether or not he has been elected.

(2) If any employee is elected as a member of the Assembly, he shall, on being declared so elected, be deemed to have been granted leave of absence from his employment in the Service for the period during which he is a member.

(3) If the Commission is of the opinion that membership of a Village Council by an employee interferes with the due and proper discharge of the duties of his employment in the Service, the Commission may call on the employee to resign from the Council or to vacate his position in the Service and if he elects to vacate his position in the Service, he shall be deemed to have been granted leave of absence from his employment in the Service for the period during which he is a member.

(4) An employee of the Service who has been granted leave of absence shall not be required or permitted during the period of his leave to carry out any of his official duties, except with the consent of the Secretary to the Government, nor shall he be entitled to receive any salary or other remuneration as an employee in respect of that

period or any part thereof, except to the extent to which he takes during that period any leave with pay to which he is entitled or to the extent that any such official duties performed have been authorised by the Secretary to the Government.

(5) If any employee, after receiving any notice mentioned in subclause (3) of this regulation in writing, does not before the expiration of 10 clear days after receiving the notice, resign from the Council or vacate his position in the Service, then on the expiration of that period, the employee shall (subject to any right of appeal conferred upon the employee by regulation 65 (1) of these regulations) be deemed to have vacated his position in the Service.

(6) Except as provided in the foregoing provisions of this regulation, his rights as an employee shall not be affected by his membership.

PART III—GRADING

25. Grades of Service—(1) The Service shall be divided into such grades as the Commission from time to time determines.

(2) The Commission shall place every officer or probationer in a grade.

26. Allocation to grades—(1) The grade in which an officer or a probationer is placed shall be determined according to the level of responsibility and skill required to be exercised in the performance of the duties allocated to him.

(2) The Commission shall conduct a continuous review of the grading of the Service, and in doing so shall ascertain whether or not there is any need to adjust the salary scale or grading pattern, and ensure that every position is placed in a grade appropriate to the level of responsibility and skill required for that position.

(3) If the grading assigned to a position under subclause (2) of this regulation does not coincide with the grading of the person holding the position, as determined by subclause (1) of this regulation, the Commission may appoint the holder to the position at its new grading, or may declare the position vacant and fill it in any authorised manner.

(4) When any position or officer is graded or regraded under these regulations, the Commission may direct that the grading or regrading shall take effect retrospectively as from such date as it thinks fit. The decision of the Commission as to the date of any such grading or regrading shall be final.

27. Review of grading—(1) Every officer shall have the right to apply to the Commission in writing for a review of the grading of the position that he occupies if he has not applied to the Appeals Committee constituted under regulation 67 of these regulations within the period of 5 years immediately preceding the application:

Provided that nothing in this subclause shall prevent any officer from making representations to the Commission at any time on the grading of the position.

(2) On receipt of any application under subclause (1) of this regulation the Commission shall review the case, and shall notify the officer in writing of the result of the review.

(3) If the officer is not satisfied with any decision of the Commission given under subclause (2) of this regulation he may, within 21 days after the notification of that decision, apply to the Appeals Committee for a review of the grading.

(4) Where the Commission agrees to change the grading of a position as a result of a decision made under subclause (2) of this regulation, or adopts and gives effect to the recommendation of the Appeals Committee in accordance with regulation 67 (8) of these regulations, the Commission may appoint the applicant to the position at its new grading or may declare the position vacant and fill it in any authorised manner.

28. Reports on employees—At such times and in such manner as the Commission may from time to time prescribe, the Secretary to the Government shall furnish to the Commission a report upon the conduct, diligence, efficiency and merit for promotion of each employee, or of such employees as the Commission may direct.

29. List of employees—The Commission shall publish a list of employees annually, in such form and with such particulars as it determines.

PART IV—ADVANCEMENT OF EMPLOYEES

30. Advancement on merit—Notwithstanding that scales of salaries may have been determined by the Commission for any position or grade, the Commission may direct that any employee shall not progress beyond the point in the scale at which he is placed, and the Commission may make advancement beyond that point conditional upon the Commission being satisfied that the employee's merit and conduct warrant such advancement.

31. Examinations—(1) The Commission may direct that an employee shall not proceed beyond a specified maximum salary until he has passed any qualifying examination that the Commission specifies.

(2) When any employee has passed an examination which in the opinion of the Commission is deserving of special consideration, or in any other case of outstanding merit, the Commission may in its discretion accelerate the advancement in salary of that employee or may approve the payment to him of a special allowance or a lump sum.

PART V—GENERAL CONDITIONS OF EMPLOYMENT

32. Hours of attendance—The Commission shall from time to time prescribe the hours of attendance to be observed by employees each week and each day of the week.

33. Additional hours of duty—(1) Any employee who is called upon by his controlling officer to work additional hours shall work during such additional hours as the controlling officer requires.

(2) Payment for additional hours shall be made at such rates and subject to such conditions as the Commission from time to time determines.

34. Records of attendance—In every department attendance books or other records of attendance shall be kept.

35. Absence from place of employment—No employee shall leave his place of employment during the prescribed hours of attendance, except on official business or with the permission of his controlling officer.

36. Care of public stores and property—Every employee shall exercise strict care and economy in the use of stores, stationery, and other property of the Crown.

37. Accounts and public money—Every employee shall exercise strict care in the handling of money held by him on behalf of the Crown, and in the observance of all instructions relating to accounts and to the collection, custody, or payment of public money.

38. Liability not to be incurred—No employee shall, without proper authority, incur or attempt to incur any liability, or to make or vary, or attempt to make or vary any contract, on behalf of the Crown or of the Government or of any department.

39. Private employment—Except with the express approval of the Commission, which it may at any time withdraw, no person shall accept appointment or election to any paid office in connection with any commercial or industrial business, or undertake any private employment or trade, or the private practice of any profession or trade:

Provided that an employee having any interest in land may, unless the Commission otherwise directs, engage in agricultural work on or in connection with the land, at any time outside official hours of attendance:

Provided also that nothing in this regulation shall prohibit an employee from becoming a member or shareholder of any incorporated company or society or persons registered as such.

40. Remuneration for official services—(1) Except with the express approval of the Commission, no employee shall receive or accept, otherwise than for the use of his department, any gratuity, fee, reward, or other remuneration of any kind whatsoever, except his salary and any allowance owing to him under these regulations for any services performed by him for the Crown, or for his attendance in an official capacity under a subpoena or order to give evidence or to produce documents in any Court.

(2) Notwithstanding subclause (1) of this regulation, any necessary and reasonable expenses incurred and paid for by the employee, in the performance of the service or in attending at the Court, may be refunded to him.

41. Solicitation or acceptance of gifts—(1) No employee or casual workman shall, directly or indirectly, solicit or accept gifts or presents from any member of the public who is concerned, directly or indirectly, with any matter connected with the duties of the employee or casual workman, or of the Service generally.

(2) Nothing in this regulation shall prohibit the acceptance by an employee—

- (a) Of any gift made as a token of courtesy according to local custom, if notification of the receipt of the gift is made to the controlling officer by the first available means of communication; or
- (b) With the permission of the controlling officer, of a public testimonial presented to the employee on his retirement from the Service, or on his transfer from one locality to another; or
- (c) A presentation to the employee from fellow employees.

(3) The Secretary to the Government may require any employee to return any gift referred to in subclause (2) (a) of this regulation, or may forbid any employee to receive any such gift.

42. Borrowing and lending of money—(1) No employee shall borrow or attempt to borrow money from a subordinate employee.

(2) No employee shall make any unauthorised loan or allowance to himself or to any other employee out of money paid to or held by the first employee in his capacity as a receiver of revenue.

43. Use of official information—(1) Every employee shall be required, on first taking up employment in the Service, to complete a statutory declaration in a form approved by the Commission to the effect that his attention has been drawn to the provisions of the Official Secrets Act 1951, or of any Act passed in substitution for that Act, and of this regulation.

(2) No employee shall use for any purpose, other than for the discharge of his official duties, any information gained by or conveyed to him through his connection with the Service.

(3) No information out of the strict course of official duty shall be divulged, directly or indirectly, or otherwise used by an employee, and no communication to the press or to the public on matters affecting the Service shall be made by any employee, except with the consent of the Secretary to the Government.

44. Outside influence—(1) No employee shall seek the influence of any person in order to obtain any promotion, transfer, or other advantage.

(2) Nothing in this regulation shall apply to evidence given on behalf of any employee before any Court or the Appeals Committee, or to representations made by the Service Organisation, or to any application or representations made to the Commission in any manner prescribed by instructions.

45. Transfers—The Commission may direct any employee to transfer from one department to another department and the employee so directed shall transfer accordingly and shall perform any duties assigned to him in that other department.

46. Obedience to instructions—(1) Every employee shall obey promptly and readily all lawful orders given to him by his controlling officer.

(2) If any employee considers that he has ground for complaints arising out of any such order or from any other cause, he may report the matter through official channels to the Commission, but shall nevertheless as far as possible carry out any orders lawfully given to him until they are countermanded.

47. Residential quarters—(1) Employees may be provided with quarters and furniture on such conditions in respect of occupancy, tenure, possession, and payments of rent as the Commission may from time to time prescribe:

Provided that no employee shall be entitled as of right to have quarters or furniture allotted to him.

(2) Any rent payable pursuant to subclause (1) of this regulation may be deducted from the employee's remuneration or from any other money due to him, without further authority than this regulation.

PART VI—LEAVE OF ABSENCE

48. Annual leave—Employees may be granted annual leave for such periods and subject to such conditions as the Commission from time to time prescribes.

49. Special leave—In special cases, the Commission may grant special leave of absence with or without pay, on such terms and conditions as it thinks fit.

50. Maternity leave—Female employees may be granted maternity leave for such periods and subject to such conditions as the Commission from time to time prescribes.

51. Furlough—Employees may be granted furlough on completion of such periods of employment in the Service and subject to such conditions as the Commission from time to time prescribes.

52. Retiring leave—The Commission may grant retiring leave, for such a period and on such conditions as it thinks fit, to any employee who retires after completing not less than 10 years' service.

53. Payment for leave due on death of employee—On the death of an employee the Commission may approve payment to his widow or dependants of any amount equal to the salary or wages that could have been granted to him for any period of leave or furlough if he had retired on the date of his death.

54. Sick leave—(1) Employees may be granted sick leave, on account of sickness or accident, for such periods and subject to such conditions as the Commission determines from time to time.

(2) No employee shall absent himself from duty under a false plea of sickness or accident.

55. Medical examination—An employee, if so required by his controlling officer, shall for the purpose of ascertaining his fitness to perform his duties submit himself to examination by a Medical Officer

or by a registered medical practitioner nominated by the Commission at such place and time as may be directed by the controlling officer, and subject to such conditions in respect of the costs of the examination as the Commission from time to time prescribes.

56. Holidays—(1) Statutory holidays prescribed by any Act of the Assembly shall be observed in the Service.

(2) The Commission may prescribe additional holidays to be observed in the Service as “Commission holidays”.

57. Unauthorised absence—(1) Notwithstanding regulation 61 of these regulations, an employee who absents himself from duty, or who fails to return to duty, and in either case continues to be absent without permission for a period of not less than 4 weeks, shall be deemed to have forfeited office:

Provided that notice of the effect of this regulation shall during such absence, but not sooner than 14 days after the first day of such absence, be sent by letter or telegram to the employee at his usual or last known place of abode, and he shall not be deemed to have so forfeited office if he returns to duty before the expiration of the week beginning with the day after the date on which the notice is so sent or the expiration of 4 weeks absence from duty, whichever is the later.

(2) If the employee subsequently satisfies the Commission that there was a valid reason for his absence and for his failure to inform the Commission earlier of that reason, the Commission may reinstate the employee. In such a case the employee shall be deemed not to have forfeited office, but to have been on leave from the Service during the period of absence.

PART VII—DISCIPLINARY PROVISIONS

58. Minor offences—In the case of a minor offence against discipline, an employee may be reprimanded or cautioned by his controlling officer.

59. Unsatisfactory work or conduct—Whenever it is found that the work or conduct of any employee is unsatisfactory, he shall be notified in writing by his controlling officer of the fact and of the way in which he is failing to meet the required standard.

60. Conviction for offences—If any employee is convicted of any offence, he shall notify his controlling officer, who shall report the circumstances relating to the offence through official channels to the Commission.

61. Complaints and inquiries—(1) Whenever it is alleged that any employee, other than a probationer, is guilty, of—

- (a) Habitual irregularity in the time of his arrival at or departure from his place of employment; or
- (b) Absenting himself from his place of employment or from his official duties without leave, or without any other valid excuse, during the prescribed hours of his attendance; or

- (c) Disobeying, disregarding, or making wilful default in carrying out, any lawful order or instructions given by any person having authority to give the order or instructions; or
- (d) Displaying insubordination by word or by conduct; or
- (e) Negligence, carelessness, or indolence in the discharge of his duties; or
- (f) Inefficiency or incompetence in the discharge of his duties; or
- (g) Behaving in an insulting or threatening manner; or
- (h) Behaving in a manner calculated to cause inconvenience or unreasonable distress to other employees, or to affect adversely the performance of their duties; or
- (i) Using intoxicating liquor or drugs to excess, or in such a manner as to affect adversely the performance of his duties; or
- (j) Failing to comply with any requirement of these regulations, or of any other regulations, or of any instructions, or of any directions applying in the Service; or
- (k) Any disgraceful or improper conduct in his official capacity, or any other improper conduct that affects adversely the performance of his duties or brings the Service into disrepute; or
- (l) Improperly using property or stores for the time being in his official custody or under his control, or failing to take reasonable care of such property or stores; or
- (m) Wilful deception as to any matter relating to his employment or the performance of his duties—
the circumstances shall be reported by his controlling officer through the official channels to the Commission.

(2) On receipt of any report under subclause (1) of this regulation, the Commission shall notify the employee of the nature of the complaint made against him, and shall require him to state in writing, within a reasonable time to be specified in the notice,—

- (a) Whether he admits or denies the truth of the complaint; and
- (b) Any further explanation that the employee may wish to make in respect of the complaint.

(3) If the employee does not deny the truth of the complaint within the time specified, he shall be deemed to have admitted the truth thereof.

(4) If, after the expiry of the time specified, the Commission is of the opinion that the complaint should be investigated by a member of the Commission or by any other person or persons specially appointed for that purpose, it shall make such an appointment, and the person or persons appointed shall hold an inquiry into the complaint.

(5) In respect of any complaint made against an employee under this regulation, the person or persons appointed under subclause (4) of this regulation to hold an inquiry may summon and examine on oath any person whose evidence may be necessary or material.

(6) The employee in respect of whom the complaint is made shall be entitled to be present at all times during the inquiry and may be represented by counsel or an agent and shall be entitled either personally or through his adviser to make representations, call evidence (including evidence by himself), and cross-examine other witnesses who give evidence, in respect of the complaint.

(7) After holding the inquiry, the person or persons appointed under subclause (4) of this regulation shall report to the Commission his or their opinions as to whether the complaint is true or untrue, and shall also forward to the Commission a copy of all evidence taken at the inquiry.

(8) Where—

- (a) An employee admits the truth of a complaint made against him under this regulation; or
- (b) The Commission is satisfied, after considering a report made to it under subsection (7) of this regulation and the evidence forwarded with the report, that a complaint against an employee in respect of which an inquiry has been held under this regulation is true—

the Commission may for the purposes of these regulations be satisfied that the complaint is established.

(9) If, in respect of any complaint made against an employee under this section, the Commission does not find the complaint against an employee established, he shall be deemed to be not guilty of the complaint.

(10) The Commission shall, within 14 days of deciding any complaint against an employee under this regulation, notify him in writing of its decision.

62. Penalty for offences—If an employee, other than a probationer, is convicted by a Court of competent jurisdiction of any offence, or if the Commission is satisfied a complaint is established under regulation 61 of these regulations against an employee, other than a probationer, the Commission may impose upon him one or more of the following penalties:

- (a) Dismissal without notice:
- (b) Dismissal with such notice as the Commission specifies:
- (c) Transfer to other duties in the Service:
- (d) Reduction of the rate of salary of the employee (with or without a consequent reduction in grading):
- (e) Any fine not exceeding \$20:
- (f) Placing on probation for a period not exceeding one year:
- (g) Reprimand and warning:

Provided that the Commission shall not impose the penalty under paragraph (a) or paragraph (b) of this regulation where the offence for which the employee has been convicted does not have a maximum penalty of imprisonment for one year or more:

Provided also that where a penalty is imposed under paragraph (a) or paragraph (b) of this regulation no other penalty may be imposed by the Commission.

63. Suspension of employees—(1) Any employee who is at any time considered by his controlling officer to be unfit to perform his duties efficiently, by reason of intoxication or the use of drugs, shall be suspended from duty by his Head of department or such other person as may from time to time be authorised to take such action under this regulation, until such time as he is in the opinion of his Head of Department again capable of performing his duties efficiently.

(2) Any employee who has been charged with any offence referred to in regulation 60 of these regulations and that is punishable by imprisonment for a term of one year or more may be transferred to other duties or suspended from duty by the Commission until the matter has been determined.

(3) Any employee who has been reported under regulation 61 of these regulations to the Commission may be transferred to other duties or suspended from duty by the Commission pending the determination of the complaint.

(4) In the case of an emergency, any employee may be suspended from duty by the Secretary to the Government who shall forthwith report the circumstances to the Commission. Such suspension shall expire after 6 working days from the date of suspension unless the Commission confirms the suspension within that period of time. The Secretary to the Government may revoke any suspension made under this subclause at any time prior to its confirmation by the Commission.

(5) The Commission may, if it sees fit, revoke any suspension made under subclause (4) of this regulation.

(6) If any employee who has been suspended under this regulation is subsequently found not guilty of the offence to which the suspension relates, he shall be paid any loss of earnings that he may have suffered while so suspended; but in every other case the employee shall receive no pay for the period of suspension, unless the Commission otherwise directs.

64. Incriminating questions—No employee may refuse to answer any question solely on the grounds that it could lead to a charge under these regulations:

Provided that any employee who so wishes shall be entitled before any interrogations to consult his solicitor or Service Organisation representative or such other person at the time resident in Niue as he may nominate.

PART VIII—APPEALS

65. Rights of appeal—(1) Every officer shall have a right of appeal in accordance with this regulation to the Appeals Committee—

- (a) Against any determination of the Commission to appoint any person other than an employee, or to promote any employee, to a position on the permanent staff with a higher maximum salary than that of the appellant:
- (b) Against any notice in writing issued under regulation 24 (3) of these regulations, but only on the grounds that the employee's membership of the Village Council does not interfere with the due and proper discharge of the employee's duties or functions as an employee in the Service:
- (c) Against a decision of the Commission made under regulation 61 of these regulations that a complaint is established:
- (d) Against any penalty imposed by the Commission in accordance with regulation 62 of these regulations except a fine of \$4 or less, or a reprimand and warning.

(2) Notwithstanding subclause (1) of this regulation no appeal shall lie against any determination of the Commission specified in paragraph (a) of that subclause if—

- (a) The appellant is prohibited under regulation 31 of these regulations from proceeding to the position in respect of which the determination is made; or
 - (b) The appellant has not applied for the position in respect of which the determination is made within the time specified in the notification of the vacancy.
- (3) Notices of appeal under this regulation shall be forwarded to the Commission in writing within 14 days after the notification of the decision appealed against, or within such extended time as the Appeals Committee may in any case allow after sufficient reasons have been shown in writing by the appellant.
- (4) The Commission shall forward copies of the notice of appeal to the Chairman of the Appeals Committee within 1 week after the date of receipt of such appeal.

66. Hearing of appeals—Any appeal under regulation 65 of these regulations shall be heard and finally determined by the Appeals Committee established under regulation 67 of these regulations.

67. Appeals Committee—(1) There is hereby established a committee to be called the Appeals Committee.

(2) The Committee shall consist of—

- (a) An officer or a retired officer or other person who shall be Chairman of the Committee;
- (b) An officer or a retired officer, to be appointed as the official member on the nomination of the Commission;
- (c) Two persons, being officers or retired officers, to be appointed as service members on the nomination of the Service Organisation:

Provided that 2 officers employed in the same Department shall not be so appointed.

(3) The members of the Committee shall be appointed by the Commission and shall hold office for a term not exceeding 5 years, and any such member may from time to time be reappointed:

Provided that the Commission shall not appoint the Chairman before attempting to gain the agreement of the Service Organisation to the proposed appointee.

(4) The 2 service members shall not be entitled to sit as members of the Committee at the same time, and shall mutually agree as to which of them shall act as a member of the Committee at any particular appeal. In default of such agreement the Chairman shall determine by lot which of the 2 service members is to act at that particular appeal.

(5) No member shall act on the Committee in any appeal affecting an officer of the Department in which the member is an officer, or in any appeal affecting himself.

(6) The Commission may from time to time appoint as a deputy of the Chairman or of the official member of the Committee a person who is eligible for appointment to the office of Chairman or member whose deputy he is to be. Any such deputy shall act for such time as the Commission shall specify.

(7) Notice of every appointment to the Appeals Committee, other than the appointment of a deputy under subclause (6) hereof, shall be published in the *Niue Gazette*.

(8) The following provisions shall apply with respect to each member of the Appeals Committee appointed under subclause (2) of this regulation:

- (a) He shall be paid such remuneration as the Cabinet determines from time to time on the recommendation of the Commission.
- (b) He may resign his office by notice in writing to the Commission, or he may be removed from office by the Commission with the concurrence of the New Zealand State Services Commission on the ground that he is unable to discharge the functions of his office (whether by reason of infirmity of body or mind or from any other cause).

(9) The Appeals Committee shall sit at such place as may from time to time be determined by the Commission.

(10) Except as otherwise provided in these regulations, the Appeals Committee shall determine its own procedure and may consider any appeal or application on the basis of written submissions, and receive such evidence as it thinks fit, whether or not that evidence would be legally admissible in a Court of law.

(11) The Appeals Committee shall make a recommendation to the Commission that the appeal should be allowed or disallowed or, in the case of an application for review of grading, that the grading of the applicant should be adjusted or should not be adjusted, and may add to its recommendation such comments as it thinks fit.

(12) The Commission may, for special reasons which shall be stated in writing, return a recommendation to the Committee for reconsideration, but otherwise shall forthwith adopt and give effect to the recommendation.

(13) If any appeal is, in the opinion of the Appeals Committee, frivolous or vexatious, the Committee may in any such case require the appellant to pay all, or such part as the Committee may specify, of the costs of the appeal.

PART IX—CASUAL WORKMEN

68. Engagement of casual workmen—(1) The Commission, or the holders for the time being of such offices or positions as may be designated in that behalf by the Commission, may engage and discharge such casual workmen as may from time to time be required.

(2) The conditions of employment of casual workmen, including pay and allowances, shall be such as the Commission determines from time to time.

(3) In determining the conditions of employment of casual workmen, the Commission shall have regard to any determination made under the provisions of the Cook Islands Industrial Regulations 1947* or any regulations made or Act passed in substitution for those regulations.

69. Revocation—The Cook Islands Public Service Regulations 1964† are not to apply in Niue.

Dated at Wellington this 15th day of March 1979.

R. M. WILLIAMS,

D. E. TOPP,

J. M. McEWEN,

Niue Public Service Commission.

*S.R. 1947/78

†S.R. 1964/33

PURSUANT to section 665 of the Niue Act 1966, the Premier, acting by and with the advice and consent of the Cabinet, hereby approves the foregoing regulations.

R. R. REX,
Premier.

Approved in Cabinet this 3rd day of April 1979.

M. F. R. COOPER,
Clerk of the Cabinet.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 26 April 1979.

These regulations are administered in the Niue Public Service Commission.