

1960/59

THE WESTERN SAMOA AUDIT REGULATIONS 1960

H. E. BARROWCLOUGH, Administrator of the Government

ORDER IN COUNCIL

At the Government House at Wellington this 4th day of May 1960

Present:

HIS EXCELLENCY THE ADMINISTRATOR OF THE GOVERNMENT IN COUNCIL

PURSUANT to the Samoa Act 1921, His Excellency the Administrator of the Government, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. (1) These regulations may be cited as the Western Samoa Audit Regulations 1960.

(2) These regulations shall come into force on the 1st day of July 1960.

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

“Accounting officer” means any imprestee, receiver, or any other person who is required to render an account for public money under any law, regulation, or appointment; and includes every person who by any Act, regulation, or Ordinance, 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 Samoa Act 1921:

“Attorney-General” means the Attorney-General of Western Samoa holding office under section 24 of the Samoa Amendment Act 1959:

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

“Council of State” means the Council of State established under section 8 of the Samoa Amendment Act 1959:

“Financial Secretary” means the Financial Secretary of Western Samoa appointed under section 25 of the Samoa Amendment Act 1959:

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

“Government” means the Government of Western Samoa:

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

“Legislative Assembly” means the Legislative Assembly of Western Samoa:

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

“Minister of Finance” means the Minister holding the portfolio of Finance in the Government of Western Samoa; and includes any person for the time being authorised to exercise or perform any of the powers, duties, or functions of the Minister:

“Public Account” in relation to Western Samoa, means the Treasury Fund and all funds subject to Parts IX and X of the Public Revenues Ordinance:

“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 Government of Western Samoa or any Department or agency of the Government; and includes public securities:

“Public Revenues Ordinance” means the Public Revenues Ordinance 1959 of Western Samoa; and includes any Ordinance passed by the Legislative 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 of Western Samoa:

“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 Act or Ordinance:

“The Treasury” means the Treasury as defined in section 3 of the Public Revenues Ordinance.

3. The Audit Office is hereby appointed to audit the Government of Western Samoa accounts, public money, and stores.

4. (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 reasonable times to the accounts and records relating to any public money or stores and to the premises in which any such accounts or records or money or stores 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 fulfill 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 as it considers necessary to establish the correctness of the accounts and transactions relating to any public money and stores, and to ascertain whether in the opinion of the Audit Office—

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

(b) All money has been fully accounted for and the rules and procedures applied are sufficient to secure an effective check on the assessment, collection, and proper allocation of revenue:

(c) Expenditure has been properly authorised and charged against the proper appropriation provided by the Legislative Assembly and otherwise properly incurred and accounted for, and the rules and procedures applied are sufficient to secure an effective control over expenditure:

(d) Essential stores records are maintained, and the rules and procedures applied are adequate for proper custody and control of stores.

(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 Act, or these regulations, or any Ordinance of the Legislative Assembly.

5. It shall be the duty of the Minister of Finance to ensure full and proper compliance by all persons with the requirements of the Audit Office under these regulations, and to this end the Minister of Finance shall have and may use all such powers as may be necessary without further authority than this regulation.

6. The powers exercisable by the Audit Office shall include all such powers as may be conferred on the Audit Office by any Ordinance of the Legislative Assembly.

7. (1) The Audit Office may communicate with the Minister of Finance or with the New Zealand Minister of Island Territories or any other person whomsoever upon any account or transaction subject to audit by the Audit Office under any Act, or these regulations, or any Ordinance of the Legislative Assembly.

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

8. (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 Audit Office shall have full power to examine any such person on oath touching the receipt or 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 or under any Act or any Ordinance of the Legislative Assembly.

(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 Public Account of Western Samoa such expenses as the Audit Office certifies to be reasonable.

9. (1) In case any difference of opinion arises between the Audit Office and the Treasury or any other Department of the Samoan Government as to the vote, appropriation, fund, account, or other authority to which any expenditure ought to be charged, or as to the proper head of revenue, fund, or account to which any receipt should be credited, or as to the lawfulness of any transaction or proposed transaction, the question shall be determined by the Council of State, and it shall be the duty of the Audit Office and of the Treasury or other Department concerned to act in accordance with that determination:

Provided that, if and so far as in the opinion of the Audit Office the question involves a matter of law, it shall be referred by the Minister of Finance for the opinion of the Attorney-General thereon, and the Attorney-General shall give his opinion in writing thereon, and it shall be the duty of the Audit Office and of the Treasury or other Department concerned to act in accordance therewith.

(2) In every such case the determination of the Council of State or the opinion of the Attorney-General, as the case may be, together with the objections of the Audit Office, shall be laid before the Legislative Assembly within 14 days after the date of the determination or opinion if the Legislative Assembly is then in session, and, if not, shall be laid before the Legislative Assembly within 14 days after the commencement of the next ensuing session.

10. (1) Every bank at which public money is lodged shall, at such times as the Audit Office directs, send to the Audit Office in Western Samoa or elsewhere such statements of accounts as the Audit Office from time to time requires.

(2) All such statements shall show such particulars of the accounts concerned as the Audit Office directs.

11. (1) The Audit Office may from time to time, by notice in writing to the Treasury, require that any claims or class of claims specified by the Audit Office shall be submitted to the Audit Office for examination before payment is made.

(2) If the Audit Office is of the opinion that any claim submitted in accordance with a requirement so made is in any respect not in accordance with law, or is wrongly charged to any appropriation, fund,

or account, the Audit Office may refuse to pass the claim for payment; but in any such case it shall, if so desired by the Financial Secretary, have the legality of the voucher determined in accordance with regulation 9 of these regulations, and the provisions of that regulation shall apply accordingly.

(3) Any person paying a claim to which any such requirement as aforesaid applies without its having been passed for payment shall be deemed to have made a payment not duly authorised, and shall be liable to surcharge accordingly.

12. (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 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 any 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 Act or any Ordinance of the Legislative Assembly or any regulations made thereunder 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 any 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 Audit Office to the Minister of Finance 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 Government.

(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.

13. (1) The Minister of Finance, on receiving the Audit Office report of an unsatisfied surcharge, shall direct the Financial Secretary 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 Government:

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.

14. (1) Any person who has been surcharged and who is dissatisfied with the surcharge may, within one month after the date of the surcharge, appeal to the Minister of Finance, 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 13 of these regulations.

(2) If, before or after making any such order, the Minister of Finance is of the opinion that any appeal should be investigated by some person or persons specially appointed for the purpose, he may, by writing under his hand, make such an appointment; and every person so appointed shall have power to summon and examine upon oath any witness whose evidence may be deemed necessary or material, and shall, after fully hearing the case, report to the Minister of Finance his opinion thereon, and shall forward to the Minister of Finance with his report a copy of all evidence received by him.

(3) As soon as practicable after the conclusion of any investigation under subclause (2) of this regulation, the Minister of Finance shall notify the person surcharged of his decision in the matter.

(4) At any such investigation the person surcharged may be represented by barrister or solicitor or agent.

15. The Financial Secretary, on satisfactory evidence being produced 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 the production of receipts or other requisite papers, and the Audit Office may pass the payment accordingly.

16. The Audit Office shall be the auditor of all local authorities and statutory authorities, and shall in respect of the money, accounts, and stores of all local authorities and statutory authorities and in respect of all persons dealing therewith, have the same duties and powers as it has in respect of public money, accounts, or stores; and the provisions of these regulations shall, as far as they are applicable and with any necessary modifications, apply accordingly as if the money and stores of every local authority and statutory authority were public money and public stores, respectively.

17. Where the Audit Office is appointed the auditor of any body or of any accounts or transactions, whether under any Act or Ordinance or otherwise howsoever, fees shall be payable to the Government of Western Samoa in respect of the audit at such rate and in respect of such bodies, accounts, and transactions as the Minister of Finance may from time to time determine, after consultation with the Audit Office.

18. The Audit Office shall, within 28 days of the receipt of any quarterly or annual abstract of receipts and payments which may be furnished to the Audit Office by the Financial Secretary in accordance with the provisions of any Ordinance, and as soon as possible after the receipt of any annual account required to be submitted to the Audit Office, certify the said abstract or annual account and return it to the Financial Secretary, at the same time forwarding a true copy thereof to the New Zealand Minister of Island Territories.

19. (1) Without limiting his right to report at any other time, the Controller and Auditor-General shall in each year prepare and sign a report containing such information as is required to be submitted by these regulations or by any Act or any Ordinance of the Legislative Assembly or any regulations under any such Ordinance, together with such other information relating to the public accounts or other accounts and transactions which are required to be audited by the Audit Office under these regulations or under any Ordinance of the Legislative Assembly or any regulations under any such Ordinance, as he deems desirable.

(2) The Audit Office shall lay the said report before the Legislative Assembly if it is then in session, and if not, then within 14 days from the commencement of the next ensuing session, and shall at the same time forward a copy of the said report to the New Zealand Minister of Island Territories.

20. (1) Every person who refuses or neglects to pay any public money into the account into which it is payable is liable on conviction to a fine not exceeding £100.

(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 these regulations is liable on conviction to a fine not exceeding £20.

21. Every person who fails to attend at the time and place required of him by the Controller and Auditor-General in pursuance of these regulations for the purpose of being examined, or who fails to produce any accounts, books, vouchers, or papers in his possession or under his control which he is so required to produce, or who refuses to be sworn or to answer any lawful question asked him by the Audit Office is liable on conviction to a fine not exceeding £100.

22. 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 on conviction to a fine not exceeding £50.

23. (1) The following regulations are hereby revoked:

- (a) The Western Samoa Audit Regulations 1948*:
- (b) The Western Samoa Audit Regulations 1948, Amendment No. 1†:
- (c) The Western Samoa Audit Regulations 1948, Amendment No. 2‡.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the revocation of any provision by these regulations shall not affect any document made or any thing whatsoever done under the provision so revoked or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the revocation and could have been made or done under these regulations, shall continue and have effect as if it had been made or done under the corresponding provision of these regulations and as if that provision had been in force when the document was made or the thing was done.

T. J. SHERRARD,
Clerk of the Executive Council.

*S.R. 1948/146

†S.R. 1951/4

‡S.R. 1952/55

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 Western Samoa. They re-enact with some changes the provisions of the Western Samoa Audit Regulations 1948 (S.R. 1948/146) and their amendments, the changes being mainly those which are necessary following the passing in Samoa of the Public Revenues Ordinance 1959 and with the transition in Samoa to Cabinet Government.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 4 May 1960.

These regulations are administered in the Department of Island Territories.