

Niue
=

RECEIVED
11/10/69

67

Immigration

129

Immigration Ordinance 1965, No.28
Immigration Amendment Ordinance 1967, No.42

ANALYSIS

1. Title
2. Short Title and Commencement
3. Arrangement of Ordinance
4. Interpretation
5. Delegation
6. Application
7. Restrictions on landing
8. Permits
9. Residence under permit
10. Prohibited immigrants
11. Application of deposits
12. Temporary prohibitions
13. Inspection of vessels
14. Deportation of immigrants
15. General powers of exemption
16. Offences, liabilities and penalties
17. Revocation
18. Application of fines

IMMIGRATION ORDINANCE 1965
1965, No. 28

An Ordinance to restrict in the interests of order and good government the entry of persons into Niue (2 June 1965).

1. Short Title and Commencement - (1) This Ordinance may be cited as the Niue Island Immigration Ordinance 1965.

(2) This Ordinance shall come into force on the day after the date on which it is publicly notified by the Resident Commissioner in such manner as he may think fit.

[This Ordinance came into force on 23 March 1966 by public notice published in the Niue Island Gazette No.1/66, page 5.]

2. Arrangement of Ordinance - This Ordinance is arranged as follows:

Sections 1 to 17.

[This section has been revised. References to introductory notes have now been included in the Analysis.]

3. Interpretation - (1) In this Ordinance, unless inconsistent with the context -

"Comptroller" means the Comptroller of Customs for Niue appointed under the authority of the [Customs Act 1966]:

"Executive Committee" means the Executive Committee of Niue established by [section 9 of the Niue Act 1966]:

"Niuean" means a person belonging to the aboriginal race of Niue; and includes a person descended from a Niuean]:

"Notify" means to communicate orally or by letter or by telegram:

"Permanent resident" means a person who either -

- (a) Is deemed by the Executive Committee acting in its uncontrolled discretion to be domiciled for the time being in Niue; or
- (b) Has resided continuously in Niue for a period of five years immediately preceding the date on which he claims to be a permanent resident; except that any person who remains absent from Niue continuously for a period longer than five years shall no longer be deemed to be a permanent resident.

"Resident Commissioner" means the Resident Commissioner of Niue:

"Voyage", "port" and any other such word or words which correspond with "vessel" shall be extended to have a meaning which corresponds with "aircraft".

(2) All proclamations, Orders, Warrants, certificates, bonds, instruments, and generally all acts of authority which originated under any earlier enactment relating to the entry of persons into Niue and are subsisting or in full force on the coming into operation of this Ordinance shall enure for the purpose of this Ordinance as fully and effectually as if they had originated under the corresponding provisions of this Ordinance and accordingly shall, where necessary, be deemed to have so originated.

(3) All matters and proceedings commenced under any such enactment and pending or in progress on the coming into operation of this Ordinance, may be continued, completed, and enforced under this Ordinance.

[The Customs Act 1966, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Customs Act 1913.

In subsection (1) the words "section 9 of the Niue Act 1966" in square brackets were substituted for the words "section 23 of the Cook Islands Amendment Act 1963". The definition of a "Niuean" in square brackets was inserted by section 3 of the Immigration Amendment Ordinance 1967.]

4. Delegation - (1) The Executive Committee may delegate by resolution in writing from time to time to the Resident Commissioner or any officer of the Niue Island Public Service or any officer of the New Zealand Public Service or representative of the Government of New Zealand, any of the functions or powers conferred upon the Executive Committee by this Ordinance.

(2) Any such delegation may be made subject to such limitations or conditions as are specified in the delegation.

(3) The Executive Committee may revoke any delegation under this section, but such revocation shall not affect in any way anything done under the delegated authority.

(4) The fact that the Executive Committee delegates any function or power under this section or revokes any such delegation shall be conclusive evidence of its authority to do so.

5. Application - The provisions of this Ordinance shall not apply to:

- (a) Her Majesty's sea, land and air Forces;
- (b) Any person duly accredited to the Government of Niue or to the Government of New Zealand by or under the authority of any other Government;
- (c) Any person who is a representative of or an employee of the South Pacific Commission, the United Nations Organisation or any of the agencies subject thereto and who is travelling under the auspices of one of these organisations;
- (d) A permanent resident of Niue;
- (e) A Niuean who was born in Niue;
- (f) A person belonging to any of the Polynesian races whether by pure or mixed descent who was born in Niue; and
- (g) A person under the age of 21 years either of whose parents is a permanent resident of Niue or being a Niuean or any person defined in paragraph (f) of this section was born in Niue.]

[Paragraphs (e) to (g) were substituted for the original paragraphs (e) and (f) by section 3 of the Immigration Amendment Ordinance 1967.]

6. Restrictions on landing - (1) Save with the authority of the Executive Committee, granted under section 4 hereof, no person shall land in Niue from any place outside Niue unless and until -

- (a) He shall be the holder of, or named in, a permit issued under section 7 hereof:

Provided that this paragraph shall not apply to any person who satisfies the Comptroller that he is the master or an officer or a member of the crew or passenger of any vessel lawfully arriving on a voyage of which Niue is not a terminus and who intends to leave Niue by the same vessel within a period of fourteen days.

- (b) He shall have made and delivered to the Comptroller a declaration in such form as may be approved from time to time by the Executive Committee:

Provided that this paragraph shall not apply to:

- (i) Any person under the age of fourteen years; or
- (ii) The master or an officer or a member of the crew or passenger of any vessel lawfully arriving on a voyage

of which Niue is not a terminus and who intends to leave Niue by the same vessel within a period of fourteen days.

- (c) He shall have deposited or have had deposited by some other person with the Comptroller such sum as the Comptroller may deem necessary to defray the cost of transporting such person to a place outside Niue where he will be permitted to land:

Provided that this paragraph shall not apply to any person who shall deposit with the Comptroller good and sufficient security (as may be required) and to the satisfaction of the Comptroller, to indemnify the Government of Niue against any cost which it may be put to in transporting such person from Niue and in maintaining him pending transportation.

(2) Any person who not being a prohibited immigrant lands in Niue in breach of the provisions of this section (apart from his liability to prosecution in accordance with the provisions hereinafter contained) may, upon the authority of the Executive Committee, but not otherwise, be dealt with as a prohibited immigrant, may be dealt with under subsections (3) and (4) of section 9 hereof.

(3) Any person landing in Niue who is exempted under the authority of paragraph (a) of subsection (1) of this section who does not leave Niue within fourteen days after the day on which he landed in Niue and who is not a holder of or named in a permit issued in terms of section 7 of this Ordinance to remain in Niue, commits an offence against this Ordinance and may, upon the authority of the Executive Committee, but not otherwise, be dealt with as a prohibited immigrant, may be dealt with under subsections (3) and (4) of section 9 hereof.

7. Permits - (1) An application for a permit to land or remain in Niue shall be in such form as may be approved from time to time by the Executive Committee.

(2) The granting of the permit shall be in the discretion of the Executive Committee and may be subject to such conditions as it thinks fit to impose.

(3) A permit may, in the Executive Committee's discretion, include the wife of the immigrant and any one or more members of his family.

(4) A permit under this section shall be issued in writing in such form as the Executive Committee may from time to time determine.

(5) No permit under this section shall be of any force or effect in respect of a person named therein who is a prohibited immigrant within the meaning of section 9 hereof.

(6) If the Executive Committee is of the opinion that a permit has been obtained by fraud or misrepresentation or has been granted under a misapprehension, it may, by notice under its hand delivered to the Comptroller, withdraw the

permit, and the permit shall thereupon cease to have any effect for the purposes of section 6 hereof.

(7) Every permit to land shall cease to have any effect for the purposes of section 6 hereof on the expiration of one year from the date on which it was issued.

8. Residence under permit - (1) Every person who has lawfully entered Niue pursuant to a permit issued under section 7 hereof shall, for the period specified in the permit from date of his entry, or any extension of that period granted under subsection (2) of this section, be deemed to be for the time being lawfully resident in Niue.

(2) The Executive Committee may, from time to time, extend as it thinks fit the period during which a person who has entered Niue pursuant to a permit is deemed to be for the time being lawfully resident in Niue, and any such extension may be revoked.

(3) If the Executive Committee is of the opinion that a permit has been obtained by fraud or misrepresentation it may, by notice in writing given at any time to any person to whom the permit was issued or to any person to whom the permit relates, revoke the continuing effect of the permit as an authority for such person to be lawfully resident in Niue.

(4) Any person who, having entered Niue pursuant to a permit, is present in Niue after the expiration of the period specified in the permit or of any extension granted under subsection (2) of this section, commits an offence against this Ordinance and may, upon the authority of the Executive Committee, but not otherwise, be dealt with as a prohibited immigrant, may be dealt with under subsections (3) and (4) of section 9 hereof.

(5) Any person who, having entered Niue pursuant to a permit, is present in Niue after the continuing effect of the permit has been revoked under subsection (3) of this section, commits an offence against this Ordinance and may, upon the authority of the Executive Committee, but not otherwise, be dealt with as a prohibited immigrant, may be dealt with under subsections (3) and (4) of section 9 hereof.

9. Prohibited Immigrants - (1) In this Ordinance the term "prohibited immigrant" means and includes -

- (a) Any person who in the opinion of a Medical Officer is a mentally defective person within the meaning of the Mental Health Act 1911 of New Zealand;
- (b) Any person who in the opinion of a Medical Officer is suffering from a notifiable disease as defined or declared in terms of the Niue Island Public Health Ordinance 1965;
- (c) Any person who is notified by the Executive Committee that such person's presence in Niue may be injurious to the peace, order, or good government of Niue;

(d) Any person who at any time within five years prior to the date of his arrival in Niue has been convicted of or been released from imprisonment after conviction in any place in respect of any criminal offence there punishable by imprisonment for more than one year.

(2) It shall not be lawful for any prohibited immigrant to land in Niue.

(3) Any prohibited immigrant who is found in Niue may be arrested by any constable (without warrant) and placed and detained on board the vessel by which he arrived in Niue or on board any other vessel about to leave Niue, and may, pending his removal by such vessel, be detained in such custody and in such place as the Resident Commissioner may direct.

(4) Subject to [subsection (2) of section 250 of the Niue Act 1966], it shall be lawful for any constable to arrest (without warrant) any person who has landed in Niue and whom on reasonable grounds he suspects to be a prohibited immigrant or a person who may, pursuant to this Ordinance, be dealt with as a prohibited immigrant may be dealt with.

[Subsection (2) of section 250 of the Niue Act 1966, being the corresponding enactment in force at the date of this reprint, has been substituted for subsection (2) of section 281 of the Cook Islands Act 1915.]

10. Application of deposits - (1) The Comptroller shall lodge with the Treasurer of the Government of Niue all moneys deposited with him under section 6 hereof.

(2) The said moneys shall be repaid to the person depositing the same with the Comptroller at the end of five years from the date of the deposit or on the departure of that person from Niue whichever shall be the earlier. But the Comptroller shall deduct from the said moneys and shall pay to the Niue Treasury any cost incurred by the Government in connection with the maintenance of such person in Niue or his deportation therefrom.

(3) Should the person who deposited the moneys with the Comptroller die before the said moneys have been refunded, the Comptroller shall pay the same to the legal representatives of such person, but less any of the costs aforesaid and the costs (if any) of burial paid by the Government.

11. Temporary prohibitions - (1) The Comptroller may, by notice in writing under his hand delivered to the master of any vessel arriving at Niue, prohibit the landing in Niue of the master or any officer or member of the crew thereof or passenger thereon unless and until the master shall have executed and delivered a bond, with two sureties to be approved by the Comptroller in such sum as the Comptroller may determine, conditioned for the due departure of the master, officers, crew of the vessel and passengers when the vessel resumes its voyage from Niue.

65/67

(2) Until the Comptroller by further notice in writing under his hand delivered to the master of such vessel certifies that a bond as aforesaid has been executed and delivered to his satisfaction, the master or any officer or members of the crew or passengers of such vessel shall not be permitted to land in Niue.

(3) If the Comptroller has reason to believe or suspects that any person arriving in Niue from beyond the seas or proposing to land in Niue is a prohibited immigrant, or is proposing to land in Niue in breach of the provisions of this Ordinance, or is a person whose intention to land in Niue should be communicated to the Executive Committee for the purpose of this Ordinance, the Comptroller may, by notice in writing under his hand delivered to such person, temporarily prohibit that person from landing in Niue.

(4) Every notice given under subsection (3) of this section shall, unless sooner revoked, expire at the end of forty-eight hours after the time when it was delivered to the person to whom it relates.

(5) Any person landing in Niue in breach of a notice given under this section commits an offence against this Ordinance, and may upon the authority of the Executive Committee but not otherwise, be dealt with under subsections (3) and (4) of section 9 hereof.

12. Inspection of vessels - (1) For the purposes of ensuring compliance with the provisions of this Ordinance an officer of Customs shall board every vessel arriving from places beyond Niue forthwith after its arrival.

(2) The master of the vessel shall forthwith deliver to the officer of Customs the passenger list and crew list, or a true copy thereof, and shall truly answer any questions relating to the passengers and crew which may be put to him by the officer of Customs for the purposes of this Ordinance.

(3) The master of the vessel shall make suitable arrangements to the satisfaction of the officer of Customs to enable him to inspect and examine each passenger and each member of the crew, and shall also provide such writing materials and accommodation as may be required by that officer for the purposes of his inspection and examination.

(4) A Medical Officer shall inform the officer of Customs as to any person on board the vessel who in his opinion comes within the restrictions of paragraph (a) or paragraph (b) of subsection (1) of section 9 hereof.

(5) The officer of Customs may put such questions as he deems necessary for the purposes of this Ordinance to any passenger or member of the crew.

(6) If the master or any passenger or any member of the crew fails or refuses to answer any question put by an officer of Customs under the provisions of this section, or answers any such question in a manner which is false or misleading in any material particular, he shall be guilty of an offence against this Ordinance.

(7) If any passenger or member of the crew of a vessel arriving at Niue from a place beyond the seas leaves the vessel before the Comptroller has notified the master that all examinations, inspections, and inquiries required to be made under this section have been completed, such person and the master shall each be guilty of an offence against this Ordinance.

(8) If any person other than the Pilot or a Medical Officer boards any ship arriving at Niue without the permission of the Comptroller before the officer of Customs has completed his duties under this section, he shall be guilty of an offence against this Ordinance.

(9) The master of a ship or any officer or member of the crew of a ship if so directed by the master, shall have full power and authority to prevent any person on board the ship landing in Niue in breach of the provisions of this Ordinance and for that purpose to use such force and means of restraint as may be reasonably necessary.

13. Deportation of immigrants - (1) In this section "immigrant" means a person now or hereafter lawfully in Niue who is not -

- (a) A permanent resident of Niue; or
- (b) A Niuean who was born in Niue; or
- (c) A person belonging to any of the Polynesian races whether by pure or mixed descent who was born in Niue; or
- (d) A person under the age of 21 years either of whose parents is a permanent resident of Niue or being a Niuean or any person defined in paragraph (c) of this section was born in Niue.]

(2) The Executive Committee may order in writing any immigrant to leave Niue in any of the cases following, that is to say -

- (a) If the Executive Committee is satisfied that such immigrant is disaffected, disloyal, or likely to be a source of danger to the peace, order, or good government of Niue;
- (b) If the Executive Committee is satisfied that the immigrant is without sufficient lawful means of support;
- (c) If the immigrant is convicted in Niue of an offence punishable by imprisonment for one year or upwards;
- (d) If the immigrant is convicted of an offence under section 15 hereof.

(3) If any immigrant remains in Niue for forty-two days after the day on which an order made under subsection (2) of this section is served upon him, he shall be liable to a fine of £50 or to imprisonment for three months.

(4) An order made under subsection (2) of this section, duly signed by the Resident Commissioner, shall be conclusive evidence that the order has been duly made and that all steps have been taken, all directions given, and all conditions fulfilled which may be necessary to the validity thereof.

(5) When any such order has been made the Executive Committee may at the same time or at any time thereafter and either before or after the expiration of the period of forty-two days mentioned in subsection (3) of this section, order any constable to arrest the immigrant and to detain him in custody until he can be placed and detained on board a vessel about to leave for a port beyond Niue.

(6) No person who has been ordered to leave Niue as aforesaid shall at any time after compliance with the order, or after having been placed on board any vessel about to leave Niue, return to or land in Niue without the authority of the Executive Committee.

(7) Every person who returns to or lands in Niue in breach of subsection (6) of this section is guilty of an offence against this Ordinance.

[In subsection (1) paragraphs (b) to (d) were substituted for the original paragraphs (b) and (c) by section 4 of the Immigration Amendment Ordinance 1967.]

14. General powers of exemption - (1) The Executive Committee may in its discretion from time to time exempt from all or any of the requirements of this Ordinance any person or class of persons entering or desiring to enter Niue or to remain in Niue.

(2) Any exemption granted by the Executive Committee under this section shall be subject to such conditions as the Executive Committee may impose.

(3) Every person who commits a breach of or fails to observe any such conditions is guilty of an offence against this Ordinance.

(4) The Executive Committee may order in writing the person having custody of any person arrested and detained in custody under this Ordinance to release such person from that custody upon such conditions as the Executive Committee may impose.

(5) Every person released from custody under subsection (4) of this section who commits a breach of or fails to observe any conditions imposed upon his release is guilty of an offence against this Ordinance.

15. Offences, Liabilities and Penalties - (1) Every person is guilty of an offence against this Ordinance who:

- (a) Lands or remains in Niue in breach of any of the provisions of this Ordinance; or
- (b) Wilfully assists any person to evade or contravene any of the provisions of this Ordinance; or
- (c) Obstructs or hinders any officer in the discharge of his functions or duties under this Ordinance; or
- (d) Wilfully assists a prohibited immigrant unlawfully to land or to remain in Niue; or
- (e) Makes any declaration or signs any application under this Ordinance which is wilfully false or misleading.

(2) In every case where a prohibited immigrant unlawfully lands in Niue the master, charterer, and owner of the ship by which such prohibited immigrant was brought to Niue are jointly and severally liable to a fine not exceeding £50 in respect of each such immigrant, and also to defray the expenses incurred by the Government of Niue in removing any such immigrant from Niue and in detaining and maintaining him in Niue pending such removal.

(3) A certificate under the hand of the Treasurer shall be conclusive evidence of the amount of any expenses incurred as mentioned in subsection (2) of this section.

(4) Any expenses which are defrayable as provided by subsection (2) of this section shall be recoverable against all persons jointly or any persons severally by whom the same are defrayable as a debt due to the Crown.

(5) Every person to whom a permit has been granted is guilty of an offence against this Ordinance who -

(a) Fails to comply with the conditions, or any of them, subject to which the permit was granted; or

(b) Remains in Niue beyond the time or any extended time for which a permit was granted or, in case of any such permit revoked by the Executive Committee, if he does not leave Niue within such time after the revocation of his permit as the Executive Committee may prescribe.

(6) Every person who wilfully makes any false or misleading statement or representation for the purpose of obtaining any permit under this Ordinance and who obtains such permit and enters or remains in Niue in accordance therewith is guilty of an offence against this Ordinance.

(7) Upon the conviction of any person of an offence under subsection (6) of this section the permit which was obtained by the false representation or statement shall become of no effect and shall be deemed never to have been granted.

(8) If the master, owner, or charterer of any vessel about to leave Niue refuses without lawful excuse to receive and retain on board any person to be deported from or otherwise lawfully ordered under this Ordinance to leave Niue, whether temporarily or permanently, together with the escort (if any) accompanying such person, he is guilty of an offence against this Ordinance.

(9) Any person guilty of an offence against this Ordinance is liable to a fine not exceeding £50 or to imprisonment for a period not exceeding three months.

16. Revocation - The Cook Islands Immigration Regulations 1939 shall, as from the commencement of this Ordinance, cease to have any effect in Niue.

17. Application of Fines - All fines received pursuant to the provisions of this Ordinance shall form part of the public revenues of Niue and shall be paid into the appropriate account thereof.

IMMIGRATION AMENDMENT ORDINANCE 1967
1967, No.42

An Ordinance to amend the Niue Island Immigration Ordinance 1965, No.28 (28 February 1967).

1. Short Title and Commencement - (1) This Ordinance may be cited as the Niue Island Immigration Amendment Ordinance 1967 and shall be read together with and deemed part of the Niue Island Immigration Ordinance 1965 No.28 (hereinafter referred to as the principal Ordinance).

(2) This Ordinance shall come into force on the first day of January 1967.

2. [This section amended section 3 of the principal Ordinance.]

3. [This section amended section 5 of the principal Ordinance.]

4. [This section amended section 13 of the principal Ordinance.]