



MANUFACTURE OF INTOXICATING LIQUOR REGULATIONS 1994

A.P. Short

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga this 19th day of December 1994

Present:

HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE IN EXECUTIVE COUNCIL

PURSUANT to section 5B of the Cook Islands Amendment Act 1961 (as amended by the Cook Islands Amendment Act 1986-87) and section 110 of the Customs Act 1913, His Excellency the Queen's Representative, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

1. Title - These regulations may be cited as the Manufacture of Intoxicating Liquor Regulations 1994.

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

"Act" means the Cook Islands Act 1915 as amended by the Cook Islands Amendment Act 1986-87;

"Authorised Officer" means an officer of Customs within the meaning of section 2 of the Customs Act 1913;

"Collector" has the same meaning as in Section 2 of the Customs Act 1913;

"Comptroller" has the same meaning as in section 2 of the Customs Act 1913;

"Excise duty" means any duty payable under these regulations on goods produced in a manufacturing warehouse;

"Intoxicating Liquor" means any liquid which contains more than two per cent by volume of alcohol and includes any spirituous liquor but does not include any intoxicating liquor produced under licence issued under the Distillation Act 1978-79;

"Licence" means a manufacturer's licence;

"Manufacture" means the breaking down of intoxicating liquor by mixing intoxicating liquor with other products to produce intoxicating liquor for the purposes of sale at retail or wholesale, but does not include distillation;

"Manufacturer" means any person the holder of a manufacturer's licence pursuant to these regulations;

"Manufacturer's licence" means a licence issued under these regulations;

"Manufacturing warehouse" means a manufacturing warehouse licenced pursuant to section 108 of the Customs Act 1913;

"Minister" means the Minister of Customs;

"Police" has the same meaning as in Section 2 of the Police Act 1967;

"Vessel" means any vat, tank, container, utensil or other object used or suited for the holding or storage or making of intoxicating liquor.

PART I - FORMS

3. Compliance with directions in forms - (1) Where a prescribed form contains, whether by way of note or otherwise, a clear direction or indication of any requirement as to -

- (a) the number of copies of the document to be tendered; or
- (b) the nature or form of the information to be furnished; or
- (c) the nature or number of copies of any document required to accompany the form; or
- (d) any action, either by way of signing a form of declaration or otherwise, to be taken by the person concerned in the transaction in which the document is used or by his authorised agent,

the requirement so directed or indicated shall be deemed to be prescribed, and shall be complied with by the person concerned in the transaction or by his authorised agent.

4. Additional copies of forms or additional particulars - The Comptroller may require copies of any prescribed form in addition to the number indicated on the form, and he may require to be shown on any form or on any document required to accompany any form information additional to that prescribed if he considers the furnishing of the additional information to be necessary for the administration of the Act or these Regulations.

5. Documents substantially in prescribed form - The Comptroller may accept, instead of any prescribed form (other than a prescribed form of declaration or licence or warrant), any document that is substantially in accordance with the prescribed form.

6. Forms to be completed in typewriting or in ink - (1) Except where the Comptroller otherwise permits, all original documents presented shall have the necessary particulars typewritten or inserted in ink, but copies may be prepared by carbon or other copying process.

(2) The Comptroller may refuse to accept any document that is not readily legible or is prepared otherwise that in accordance with subclause (1) of this regulation.

PART II - LICENCES

7. Application for licence - (1) Every application for a licence under this regulation shall be made in form 1 in the First Schedule to these regulations.

(2) Every application for a licence shall be made to the Minister but shall be forwarded in the first instance to the Comptroller.

(3) The application shall be accompanied by the prescribed fee and by such plans and particulars as the Minister may require.

8. Form of licences - Every licence granted under the Act shall be in form 2 in the First Schedule to these regulations.

9. Grant or refusal of licence - (1) In considering any application for a licence, the Minister shall take into consideration -

- (a) the output at that time, and the possible future output, of every holder of any such licence for the time being in force; and
- (b) the economic circumstances of the industry or any branch of the industry to which the application relates; and
- (c) the public interest.

(2) No person shall be granted a licence of any description if in the opinion of the Minister he is not a fit and proper person to hold the licence on the grounds that he is not of good character and reputation.

(3) Subject to the provisions of this regulation, the Minister may, in his discretion, grant or refuse any application for a licence.

(4) Every licence shall be subject to such terms and conditions as may be prescribed or as the Minister thinks fit to impose.

(5) Before any licence is granted, the Minister may require the applicant to give security for the due and faithful observance of these regulations.

(6) Any decision of the Minister under this regulation shall be final and conclusive.

10. Manufacturer's Licence - Subject to these regulations a manufacturer's licence shall authorise the holder to manufacture from the materials and ingredients and in the manner stated in the licence intoxicating liquor of a kind specified in the licence.

11. Licence to be displayed - Every manufacturer shall cause the licence or a copy thereof to be displayed in the manufacturing warehouse in a place where it may be easily seen and read by any authorised officer.

12. Licence fees - There shall be paid by the holder of any licence an annual licence fee of the amount prescribed in the Second Schedule to these regulations.

13. Renewal of licence - Every application for the renewal of a licence shall be in form 3 in the First Schedule to these regulations.

(2) Every application for the renewal of a licence shall be made to the Minister in the prescribed form not less than one month and not more than three months prior to the date on which the licence expires, and shall be forwarded in the first instance to the Comptroller -

Provided however that where the Minister is satisfied that failure to make any such application before that date is due to justifiable mistake or other reasonable cause, he may accept an application made at any time before the expiry of the licence.

(3) Subject to the following provisions of this regulation and to regulation 14 the Minister shall grant a renewal subject to such conditions as he thinks fit and as he is authorised to impose when granting a new licence.

(4) Every such renewal shall be for a period of one year.

(5) In granting any renewal the Minister may either endorse the existing licence or issue a new licence but any such licence shall show on its face that it is a renewal of a licence.

(6) The Minister may in the Minister's sole discretion refuse to renew any manufacturer's licence if, in the year immediately preceding the manufacturer fails to manufacture at least two thousand litres of intoxicating liquor.

14. Revocation and suspension of licences - (1) The Minister may at any time revoke any licence if -

(a) he is satisfied that the holder of the licence has not carried on any operation authorised by the licence in all respects in conformity with the terms and conditions of the licence; or

(b) the holder of the licence has been convicted of any offence against these regulations, the Act, any of the Customs Acts or Sections 110 to 128 or Part X of the Crimes Act 1969.

(2) Instead of revoking a licence, the Minister may suspend it for such period as he thinks fit.

15. Appeal against revocation or suspension of licence - (1) If the Minister revokes or suspends a licence under regulation 14 of these regulations, the holder of the licence may appeal to the High Court against the revocation or suspension.

(2) Every such appeal shall be made by giving notice of appeal within 14 days after the date of on which the Minister's decision to revoke or suspend the licence has been communicated to the appellant.

(3) The decision to revoke or suspend the licence shall not take effect until the expiry of the said period of 14 days but this regulation shall be without prejudice to the appellant's right to apply to the High Court for a stay of execution of the revocation or suspension until the appeal is heard.

(4) On hearing the appeal the Court may confirm or reverse the decision appealed against or, in the case of a suspension, may vary the period of the suspension.

(5) Subject to the provisions of this section, the procedure in respect of any such appeal shall be in accordance with the rules of the Court.

(6) If a stay of execution is granted by the High Court and the appeal is not finally determined on or before the expiry of the licence by effluxion of time, the licence shall be deemed to be extended until the final determination of the appeal.

(7) Upon the suspension or revocation of the licence of a manufacturer that manufacturer shall forthwith enter for home consumption all intoxicating liquor manufactured under the licence and held in a manufacturing warehouse.

PART III - MANUFACTURERS **GENERAL PROVISIONS**

16. Securing of Premises - Every manufacturer shall cause his manufacturing warehouse to be fenced, walled or otherwise secured to the satisfaction of the Collector.

17. Office accommodation - Every manufacturer shall, if required to do so by the Collector, provide and maintain at his manufacturing warehouse, to the satisfaction of the Collector, office accommodation for the exclusive use of any authorised officer who may at any time be on duty at the manufacturing warehouse.

18. Manufacturer to provide locks - (1) Every manufacturer shall provide and maintain to the satisfaction of an authorised officer sufficient fastenings and locks for properly securing the openings into any vessel and from any pipe in his manufacturing warehouse so that, when the locks or fastenings are on, nothing can flow or be otherwise moved into or from that vessel or pipe.

(2) Every manufacturer commits an offence against these regulations who refuses or fails to provide and maintain such locks and fastenings, or prevents or hinders any authorised officer from affixing any such lock or fastenings.

19. Manufacturer to provide facilities and records for inspection - (1) Every manufacturer shall provide all reasonable facilities and assistance to enable authorised officers to exercise their powers and functions under these regulations and where applicable under the Customs Act 1913.

(2) Without limiting the generality of Regulation 19(1) of this regulation, every manufacturer shall in his manufacturing warehouse -

- (a) keep and maintain correct weights, scales, and measures, to the satisfaction of the Comptroller, available at all times for the use of authorised officers;
- (b) in respect of every vessel authorised by these regulations, provide to the satisfaction of the Collector suitable means whereby the quantity at any time contained in every such vessel may be ascertained;
- (c) keep all vessels and equipment, including such locks and fastenings as may be required under these regulations, in a secure and clean condition to the satisfaction of the Collector;
- (d) where required by the Collector, keep numbered and suitably identified every fixed vessel in the manufacturing warehouse and each door of any place or store in which manufacturing operations are carried on or in which materials used in the manufacture of any intoxicating liquor are kept or stored;
- (e) keep and maintain a place where authorised officers may by OIML hydrometer or any other alcoholometer device take and test samples of intoxicating liquor manufactured or in the process of being manufactured by the manufacturer;

- (f) cause all casks, bottles or other containers for the holding of intoxicating liquor to be arranged in such manner as may be approved by an authorised officer;
- (g) keep an account of -
 - (i) all intoxicating liquor received into a warehouse; and
 - (ii) the removal of all intoxicating liquor from the warehouse;

in the manner prescribed in form 4 of the First Schedule of these regulations

(3) Every person who contravenes or fails to comply with any provision of this regulation, or any requirement of any authorised officer under this regulation, commits an offence against these regulations.

20. No alterations - No vessel or pipe and no part of a manufacturing warehouse shall be demolished, altered, renovated, added to or altered in any way without the prior written approval of the Collector.

PART IV - MANUFACTURING

21. Manufacturer to give notice before manufacturing - Every manufacturer intending to manufacture intoxicating liquor shall not more than seven (7) days and not less than two working days prior to the manufacture of any intoxicating liquor serve on the Collector a notice which shall be in form 5 in the First Schedule to these regulations.

22. Authorised Officer to be present at manufacturing - (1) It shall be an offence for a manufacturer to manufacture intoxicating liquor without the supervision of an authorised officer.

23. Authorised officer may be present at bottling - (1) When any manufactured intoxicating liquor is being transferred from the vessel in which it was manufactured to any other vessel or vessels, an authorised officer may at the discretion of the Collector be present.

24. Authorised officer may order manufacturing to cease - Any authorised officer who has reasonable cause to believe that any manufacturing or transfer of intoxicating liquor from one vessel to another vessel or vessels is being carried out in contravention of the Act, these regulations or the manufacturer's licence that authorised officer may order the manufacturing or transfer to cease forthwith.

25. Offence not to cease manufacturing - Any manufacturer who does not cease to manufacture or transfer after ordered to do so by an authorised officer under Regulation 24 of these regulations commits an offence against these regulations.

26. Alcoholic content to be stated - On any vessel holding manufactured intoxicating liquor there shall be clearly stated to the satisfaction of the Comptroller the alcoholic content by volume of the manufactured intoxicating liquor contained therein.

27. Charge for attendance of Authorised Officer - (1) There shall be paid to the Collector by the manufacturer a charge for the attendance of any authorised officer under Regulations 22 and 23 of these regulations

(2) The charge for attendance of an authorised officer shall be the same as would be payable from time to time by the manufacturer if these regulations were made under the Customs Acts.

PART V - EXCISE DUTY

28. Excise duty on intoxicating liquor a crown debt - (1) Excise duty shall be payable on all intoxication liquor manufactured in a manufacturing warehouse at the rates prescribed in the Third Schedule to these regulations.

(2) Excise duty on any intoxicating liquor entered into the Cook Islands from a manufacturing warehouse shall, immediately upon its entry, constitute a debt due to the Crown.

(3) Intoxicating liquor manufactured in a manufacturing warehouse shall remain under the control of Customs and shall not be removed from a manufacturing warehouse until all excise duty in respect of that intoxicating liquor has been paid.

(4) Such debt shall be owing by the person who is the manufacturer of the intoxicating liquor and by every person who, at any time before the debt has been fully paid, is or becomes the owner of or entitled to the possession of or is beneficially interested in the intoxicating liquor; and all such persons shall be jointly and severally liable for the excise duty.

(5) Such debt shall be recoverable by action at the suit of the Comptroller of Customs on behalf of the Crown.

(6) The right to recover excise duty as a debt due to the Crown shall not be effected by the fact that a bond or other security has been given for the payment of excise duty, or that no proper assessment of excise duty has been made in due course under these regulations, or that a deficient assessment has been made.

29. Payment of excise duty - All excise duty on intoxicating liquor manufactured in a manufacturing warehouse shall be paid to the Collector forthwith upon the entry for home consumption of that intoxicating liquor.

30. Excise duty payable where intoxicating liquor not accounted for - (1) Where a person who has, or has been entrusted with, the possession or custody of intoxicating liquor manufactured in the Cook Islands and subject to the control of the Customs does not account for that intoxicating liquor to the satisfaction of the Collector, that person shall, on demand in writing made by the Collector, pay the excise duty that would have been payable on the intoxicating liquor if it had been entered for home consumption on the day on which the Collector made the demand.

(2) Nothing in this regulation shall effect the liability of a person arising under or because of any provision of these regulations or any security given under these regulations.

31. Excise duty in respect of deficiency - (1) If the Collector is satisfied that, having regard to the quantity and alcoholic strength of the materials used in the manufacture of intoxicating liquor, the quantity of intoxicating liquor produced in the manufacturing warehouse is less than the quantity that should have been produced, he shall serve on the manufacturer an account showing the amount of the deficiency.

(2) The manufacturer shall, unless he accounts for the deficiency to the satisfaction of the Collector, pay the excise duty that would have been payable on a quantity of intoxicating liquor equal to the amount of the deficiency, as if that quantity had been entered for home consumption by the manufacturer on the day on which the account was served.

32. Allowance where intoxicating liquor is lost by accident - Notwithstanding Regulation 28(1) where an authorised officer is satisfied that any intoxicating liquor has been destroyed by fire or other inevitable accident, or loss by the leakage or bilging of any vessel, without the wilful act or negligence of the manufacturer, no excise duty shall be demanded from or paid by the manufacturer on intoxicating liquor so destroyed or lost.

PART VI - POWERS OF AUTHORISED OFFICERS

33. General powers of Authorised Officers - Every authorised officer may -

- (a) at any time by day or by night enter any premises licenced under the Act, and shall have complete access to every part of such premises;
- (b) require the production of any book, record, notice, or other documents that any person by the Act or by these regulations is required to keep, or any other documents kept by the manufacturer in relation to the manufacturing warehouse and the making or sale of intoxicating liquor and examine and copy any such document or make extracts from it;
- (c) Examine, regauge, retest, take account of, and note any plant, material and intoxicating liquor on the premises;
- (d) make such enquiry as he thinks necessary in order to ascertain whether or not the provisions of this Act or these regulations have been or are being complied with.

34. Authorised Officer may lock coverings - An authorised officer on duty at a manufacturing warehouse may lock, secure, and fasten such coverings, fastenings, pipes and vessel in the manufacturing warehouse in such manner as the Collector directs, and may keep them so locked, fastened, and secured at all times except when they are opened, unfastened, or unlocked by or in the presence of an authorised officer.

35. Authorised Officer to hold keys - Wherever under this Act or by these regulations a manufacturer is required to provide -

- (a) a place of security; or
- (b) locks and fastenings -

the keys thereof shall be held by an authorised officer.

36. Search of Manufacturer's premises - In order to determine whether any vessel or other instrument may convey or conceal any intoxicating liquor so as to hinder or prevent him from taking or keeping a true account thereof, any authorised officer member of the police, or any person acting in his aid, may by night or day break up any ground and any part of a manufacturing warehouse, or any building, residence, warehouse or other structure in the control, possession or ownership of the manufacturer or break through any wall or partition thereof or belonging thereto, and make such examination as he thinks fit.

37. Arrest of offenders - Any authorised officer or member of the Police may without warrant or other authority, arrest any person found committing any offence against Section 5 of the Act.

PART VII - Securities

38. Securities - (1) The Collector shall have the right to require and take securities for payment of excise duty and generally for compliance with the Act and these regulations; and pending the giving of the required security he may refuse to do any act in the execution of his office in relation to any matter in respect of which the security is required.

(2) With respect to any security given under these regulations the following provisions shall apply -

- (a) any such security may as required by the Collector be by bond (with or without sureties), or guarantees to her Majesty, or by a deposit of cash or by all or any of those methods;
- (b) instead of a security being given in respect of a particular matter, a general bond may, at the discretion of the Collector, be entered into for the performance of all obligations of a kind similar to those to which the security relates.

(3) A security may be required at any time after the grant of a licence or permit under these regulations, notwithstanding that the licence or permit was granted without any security being required.

39. New securities may be required - If at any time the Collector is dissatisfied with the sufficiency of any security, he may require new security in its place, or in addition; and if the new security is not given he may refuse to do any act in the execution of his office in relation to any matter in respect of which the new security is required.

PART VIII - OFFENCES

40. Intoxicating liquor in an unauthorised place in manufacturing warehouse - If any intoxicating liquor is found in a manufacturing warehouse in any place other than -

- (a) a spirit store or store room approved under these regulations; or
- (b) a vessel or pipe authorised under the relevant licence; or
- (c) any other place authorised under the Act -

the manufacturer commits an offence and shall be liable to a fine not exceeding \$200.00.

41. Offences in relation to locks and fastenings - Every person commits an offence and shall be liable to a fine not exceeding \$500.00 who -

- (a) without lawful excuse has in his possession any key capable of opening any lock or fastening that the manufacturer is required to provide under these regulations; or
- (b) by any means, device, or contrivance opens, breaks, damages, or removes any lock, seal, or fastening at any time after it has been locked, made or secured by an authorised officer;
- (c) commits an offence against Regulation 22 of these regulations.

42. General penalty - Every person who commits an offence against the Act or these regulations for which no other penalty is provided shall be liable to a fine not exceeding \$200.00.

PART IX - MISCELLANEOUS PROVISIONS

43. Evidence in respect of licences, etc. - Without limiting the application, for the purposes of the Act and these regulations of section 276 of the Customs Act 1913 and any proceedings for an offence against these regulations, or for the recovery of fees or charges or excise duty payable under these regulations, every allegation in any information for any such offence, or made by or on behalf of the Crown in any statement of claim, that a person is not the holder of a licence, permit, or authority under the Act, or that the fees or excise duty have not been paid, shall be presumed to be true unless the contrary is proven.

44. Customs Act 1913 to apply - Except as otherwise provided by the Act or these regulations the provisions of the Customs Act 1913 shall apply, so far as they are applicable and with all necessary modifications, in respect of intoxicating liquor manufactured under a licence issued pursuant to Section 5A of the Act.

45. Manufacturer to hold warehouse licence - It shall not be lawful for a person whether or not the holder of a licence issued pursuant to section 5A of the Act to manufacture intoxicating liquor in any place other than a manufacturing warehouse licenced pursuant to section 108 of the Customs Act 1913.

M. Taruia

Clerk of the Executive Council

These regulations are administered by the Customs Department

SCHEDULES

FIRST SCHEDULE

Form 1

Reg. 7

APPLICATION FOR LICENCE TO MANUFACTURE INTOXICATING LIQUOR

To the Minister of Customs

I, _____, hereby apply for a licence under the Cook Islands Act 1915 to manufacture intoxicating liquor

 Full name of applicant ...

 Capacity in which application
made, e.g., Director,
Secretary, or authorised
officer ...

 Name and address of firm or
company ...

 Address where manufacturing
is to be carried on ...

 Description (make and kind)
of each vessel to be used
capacity (litres) ...

 Name and description of every
building and the purpose of
which each is to be used ...

 Description of types of
intoxicating liquor to be
produced (e.g. liqueurs) ...

 Signature of Applicant

Dated the

day of

19

I attach:

- (1) A detailed plan of the premises, plant, and equipment.
- (2) A statement of the capacities of all vessels and equipment.

I declare that the contents of this application and of the supporting plans, statements, and charts are true in every particular.

Security for \$.....executed19.....

Annual licence fee \$.....herewith.

Form 2

Reg. 8

LICENCE

I, Minister of Customs, under powers vested in me by the Cook Islands Act 1915 hereby grant to (Name of licensee) a licence to manufacture intoxicating liquor to the alcoholic strength from the ingredients and in the manner stated herein at (description of premises) subject to compliance by the licensee with the provisions of the Cook Islands Act 1915 and the Manufacture of Intoxicating Liquor Regulations 1994 and with any other special conditions of the licence, viz:

- 1. This licence shall authorise the licensee to use the following ingredients in the manufacture of intoxicating liquor:
2. No intoxicating liquor manufactured under this licence shall have an alcoholic content greater than by volume of proof spirit.
3. This licence shall authorise the holder to manufacture intoxicating liquor of the following type(s).
4. This licence shall remain in force until the day of 19 unless previously suspended or revoked.

Minister of Customs

Annual licence fee \$.....Receipt No.of.....

Collector

Form 3

Reg. 13

APPLICATION FOR RENEWAL OF LICENCE

I, _____, hereby apply for renewal of this licence for the period ending the _____ day of _____ 19 ____ Fee \$.....herewith.

(Signature)

The licence is renewed until the _____ day of _____ 19 ____

Minister of Customs
Comptroller of Customs

Date:

Annual licence fee \$.....Receipt No.of.....

Collector

Form 5

Reg. 21

NOTICE OF MANUFACTURING

TO: The Comptroller of Customs

I, _____, hereby give you notice that pursuant to a licence issued the _____ day of _____ 19 _____, intend to manufacture intoxicating liquor on _____ day the _____ day of _____ 19 _____ commencing at _____ am/pm. (The date of manufacture must be a normal working day and the time of commencement must be between the hours of 9:00am and 2:00pm)

I intend to manufacture _____ (state which categories of intoxicating liquor you wish to manufacture pursuant to the licence e.g. liqueurs) using the following formula; (here state the ingredients to be used, the quantities to be used and the estimated time between commencement of manufacture and bottling)

Manufacturer (or Agent)

Dated the _____ day of _____ 19 _____

SECOND SCHEDULE**Reg. 12****LICENCE FEE**

Annual Licence fee: \$100

(No fee shall be payable in respect of any licence for the manufacture of intoxicating liquor for scientific, educational, or such other non-commercial purposes as the Minister may approve).

THIRD SCHEDULE

Reg. 28

EXCISE DUTY RATES

Spirits, liquors and spirituous beverages which if imported would be classified within Tariff items 2208.5010, 2208.5020, 2208.9020, 2208.9030, 2208.9040 and 2208.9050.

	<u>Unit</u>	<u>Rate</u>
Gin and Geneva		
- Containing less than 57% by volume of alcohol	l al	\$11.65 per l al
- Containing 57% by volume of alcohol or more	l al	\$14.00 per l al
Liquers		
- Containing less than 23% by volume of alcohol	lt	\$5.00 per lt
- Containing 23% but less than 57% by volume of alcohol	lt	\$5.00 per lt
- Containing 57% by volume of alcohol or more	lt	\$6.00 per lt
Vodka	l al	\$11.65 per l al