
Niue Islands Village Council Ordinance 1967

NIUE

[August 1990 Edition]

NIUE VILLAGE COUNCILS ORDINANCE 1967

Ordinance 41 of 1967 - 1 May 1967

ANALYSIS

PART I - PRELIMINARY

Title

1. Short Title and Commencement
2. Interpretation

PART II - ADMINISTRATION

3. Administration of Ordinance
4. Advisers
5. Powers of inspection
6. Appeals
7. Annual Reports

PART III - ESTABLISHMENT ETC. OF COUNCILS

8. Establishment and constitution of village councils
9. Councils to be Bodies Corporate
10. Power to vary the constitution of councils

PART IV - ENROLMENT, ELECTIONS, ETC.

11. Qualification of electors
12. Electoral Rolls
13. General provisions
14. Qualifications for membership
15. Elections
16. Tenure of office
17. Vacation of office
18. Removal of councillors from office
19. Casual vacancies

PART V - MEETINGS ETC.

20. Chairmen, Deputy Chairmen, etc.
21. Standing Orders
22. Meetings of councils
23. Chairmen of meetings of councils
24. Quorum and voting at meetings
25. Minutes
26. Councillors not to vote on certain matters

PART VI - POWERS, DUTIES ETC. OF COUNCILS

27. General functions of councils
28. Agency functions for Government

Bylaws

29. General power to make bylaws
30. Notice of bylaws
31. Assent to and commencement of bylaws, etc.
32. Model bylaws

Taxation, etc.

33. Power to levy taxes
34. Review of taxes
35. Fees for services etc.
36. Exemptions
37. Recovery of taxes

PART VII - FINANCE

38. Deposit accounts
39. Discretionary grants from public revenue
40. Councils may accept offers by Resident Commissioner to advance moneys
41. Repayment of advances
42. Borrowing
43. Estimates
44. Reserve funds
45. Power to invest
46. Accounts
47. Writing off irrecoverable amounts
48. Audit

PART VIII - SUSPENSION AND DISSOLUTION

- 49. Suspension
- 50. Appointment of Manager
- 51. Period of suspension
- 52. Abolition of councils

PART IX - COUNCIL STAFF

- 53. Council clerks, etc.
- 54. Employees

PART X - OFFENCES

- 55. Failure to comply with rules
- 56. Failure to pay taxes
- 57. Obstruction
- 58. Application of fines

PART XI - MISCELLANEOUS PROVISIONS

- 59. Judicial notice
- 60. Public purposes
- 61. Regulations
- Schedule

An Ordinance to provide for the establishment of Village Councils (28 February 1967).

PART I - PRELIMINARY

1. Short Title and Commencement - (1) This Ordinance may be cited as the Niue Island Village Council Ordinance 1967.

(2) This Ordinance shall come into force on a date to be fixed for the commencement thereof by the Resident Commissioner by notice in the Gazette.

[The Ordinance came into force on 1 May 1967 by notice dated 1 May 1967 and published in the Niue Island Gazette.]

2. Interpretation - In this Ordinance, unless the context otherwise requires -

"Adviser", in relation to a Council, means an adviser appointed under section 4 of this Ordinance for that Council;

"Assembly" means the Niue Island Assembly;

"Auditor", in relation to a Council, means the Council Auditor appointed under section 48 of this Ordinance for that Council;

"Community Development Officer", means the Community Development Officer appointed under Part XXXI of the Niue Act 1966 and holding that office in the Niue Public Service;

"Council" means a Village Council established by or under this Ordinance;

"Council area", in relation to a Council, means the area in and for which the Council is established;

"Council Officer", in relation to a Council, means any official, other than the Council Clerk, employed by the Council;

"Election" means an election of a Councillor or Councillors;

"Executive Committee" means the Executive Committee established by section 9 of the Niue Act 1966;

"Financial year" means the period of twelve months commencing on the first day of April in a year and ending the thirty-first day of March next following;

"Gazette" means the Niue Island Gazette;

"Liquidator", in relation to a Council, means the Liquidator of the Council appointed under section 52 of this Ordinance;

"Manager", in relation to a Council, means the Manager appointed for the Council under section 50 of this Ordinance;

"Resident Commissioner" means the Resident Commissioner of Niue;

"The constituent notice", in relation to a Council, means the notice or notices published under Part III of this Ordinance;

"Secretary" means the Secretary of the Administrative Department appointed under Part XXXI of the Niue Act 1966, and holding that office in the Niue Public Service;

"Public Service" means the Niue Public Service;

"The Council Clerk" in relation to a Council, means the Council Clerk appointed for that Council;

"The regulations" means the regulations made under this Ordinance;

"This Ordinance" includes the Regulations.

(2) Subject to the provisions of sub-section (1) of this section, terms defined in the Niue Act 1966 have the meanings so defined.

PART II - ADMINISTRATION

3. Administration of Ordinance - (1) The Community Development Officer shall be charged with the administration of this Ordinance.

(2) The Community Development Officer may, by writing under his hand, delegate to any other officer of the Public Service all or any of his powers or functions under this Ordinance, (except this power of delegation).

(3) The Community Development Officer or any officer to whom any power or functions have been delegated under sub-section (2) of this section shall not be eligible to hold any other office under this Ordinance in relation to a Council.

4. Advisers - (1) The Community Development Officer, with the concurrence of the Resident Commissioner, may by notice published in the Gazette appoint an officer of the Public

Service to act as Adviser to a Council and define the particular duties and responsibilities of each adviser.

(2) An Adviser shall advise and assist the Council in accordance with the duties and responsibilities prescribed by the Community Development Officer.

(3) An Adviser is entitled to attend meetings of the Council and to take part in debate, but is not entitled to vote and shall not be counted towards a quorum.

5. Powers of Inspection - The Community Development Officer, or any officer authorised by him may at any time -

(a) inspect the books, accounts or records kept or held by the Council; and

(b) enter upon and inspect any land, building, premises, or machinery or thing owned or controlled by the Council or in which the Council has an interest.

6. Appeals - (1) A person (including a Council) aggrieved by a decision of the Secretary under section 18 of this Ordinance may appeal to a Judge of the High Court, whose decision shall be final.

(2) A person (including a Council) aggrieved by a decision of the Community Development Officer under this Ordinance (other than under section 18 of this Ordinance) may appeal to the Resident Commissioner whose decision shall be final.

7. Annual Reports - (1) The Community Development Officer shall present to the Resident Commissioner on or before the thirtieth day of April in every year, for presentation to the Assembly, a report reviewing the operation of this Ordinance and of the Village Council system, and drawing attention to any measures which are, in his opinion, desirable for achieving the purposes of this Ordinance and for improving the operation of that system.

(2) Each Council shall, on or before the tenth day of April in every year, present to the Community Development Officer, for presentation to the Resident Commissioner, a report reviewing the operations of the Council during the twelve months ending on the thirty-first day of March then last past.

PART III - ESTABLISHMENT ETC. OF COUNCILS

8. Establishment and Constitution of Village Councils - The Resident Commissioner, acting with the advice and consent of the Executive Committee, may -

(1) By notice publicised in the Gazette, establish a Council in and for the village described in the notice, and

(2) Either in the notice establishing a Council or by a subsequent notice, make provision for the manner in which the Council is to be constituted, for the boundaries of the Council area and for the manner of election to the Council.

9. Councils to be Bodies Corporate - A Council is a body corporate by the name under which

it is established with perpetual succession and a common seal, and, subject to the provisions of this Ordinance, has power to acquire, hold, dispose of, mortgage or pledge property, to enter into contracts, to borrow money, to invest funds, to institute and defend actions, suits and other legal proceedings, and to do all other things necessary for the purposes of its functions and duties.

10. Power to vary the Constitution of Councils - After consultation with the Council concerned, the Resident Commissioner, acting with the concurrence of the Executive Committee, may, by notice published in the Gazette -

- (a) Vary the boundaries of a Council area in accordance with any change made in the boundaries of a constituency under the Niue Island Assembly Ordinance 1966;
- (b) Change the name of a Council; or
- (c) Vary the Constitution of a Council.

PART IV - ENROLMENT, ELECTIONS, ETC.

11. Qualifications of Electors - The qualifications and disqualifications of electors under this Ordinance shall be as provided under section 12 of the Niue Island Assembly Ordinance 1966.

12. Electoral Rolls - (1) The electoral rolls to be used for elections to village councils under this Ordinance shall be the same rolls as those required by section 13 of the Niue Island Assembly Ordinance 1966.

(2) The provisions as to the compulsory registration of electors under section 14 of the Niue Island Assembly Ordinance 1966 shall apply in like manner to the elections for members of village councils under this Ordinance.

13. General Provisions - All other provisions as to electors and electoral rolls shall be as provided in Part III of the Niue Island Assembly Ordinance 1966.

14. Qualifications for Membership - (1) Subject to the next succeeding subsection, a person who is entitled to be enrolled under section 11 of this Ordinance and is enrolled as an elector for his constituency, is qualified to nominate a candidate for the Council in that Constituency and to be a Councillor.

(2) A person is not qualified to nominate a candidate for a Council or to be a Councillor if -

- (a) he is an officer or employee of a Council
- (b) he is an undischarged bankrupt.

14. Elections - (1) All Village Councillors shall be elected by secret ballot, except as is provided in section 19 of this Ordinance.

(2) Elections for individual Councils shall be held on such dates as are specified from time to time by the Resident Commissioner by notice in the Gazette.

(3) Subject to this Ordinance, the method of and the procedure to be followed at an election shall be to all intents and purposes the same as is prescribed in the Niue Island Assembly Ordinance and in the conduct and supervision of any election under this section the Chief Electoral Officer shall have due regard to the relevant provisions of the said Ordinance.

(4) In this section, the "Chief Electoral Officer" means the Chief Electoral Officer appointed under section 3 of the Niue Island Assembly Ordinance 1966.

16. Tenure of Office - Subject to this Ordinance and to anything to the contrary in the constituent notice, the tenure of office of Councillors shall be three calendar years from and including the day on which the first election is completed and, thereafter, three calendar years from and including the day on which the previous election was completed.

17. Vacation of Office - (1) A Councillor who -

(a) resigns a seat by notice in writing to the Community Development Officer;
(b) is absent, without leave of the Council for three consecutive meetings of the Council, shall be deemed to have vacated his seat.

(2) The resignation of a Councillor takes effect on the date on which the notice is received by the Community Development Officer.

18. Removal of Councillors from Office - (1) Notwithstanding anything contained in this Ordinance, the Community Development Officer shall, after due inquiry and after consultation, in such manner as he thinks proper, with the Council, report the circumstances to the Secretary, where he is satisfied that the Councillor has abused his powers or is incapable of exercising them justly or is, for any other reason, not a fit and proper person to continue to be a Councillor.

(2) The Secretary may suspend or remove from office any Councillor so reported and suspension or removal from office shall take effect upon being notified to the Council.

(3) The Secretary shall not remove a Councillor from office under this section unless the Councillor has been given reasonable opportunity of answering the allegations made against him.

19. Casual vacancies - (1) Where a casual vacancy occurs, whether by reason of death, resignation or otherwise, in an office of Councillor -

(a) if the vacancy occurs more than six months before the date upon which the tenure of office of the former Councillors expires under section 16 of this Ordinance - the vacancy shall be filled in accordance with section 15 of this Ordinance; or

(b) in an other case - the Community Development Officer may appoint a person who is qualified to be a Councillor to hold the vacant office.

(2) A Councillor elected or appointed in accordance with this section shall hold office for the balance of the tenure of office of the former Councillor.

PART V - MEETINGS ETC.

20. Chairmen, Deputy Chairmen, etc. - (1) There shall be a Chairman and a Deputy Chairman of each Council who shall be elected from time to time, as determined by the Council, by vote of the Councillors from amongst their own number and may, in like manner, be removed from office.

(2) The person for the time being holding office as a member of the Assembly representing the constituency in which a Council has been established shall, in the event that he is not returned as a member in the Council election, be ex-officio a member of that Council.

21. Standing Orders - (1) Subject to this Ordinance, a Council shall adopt Standing Orders which have the prior approval of the Secretary covering:

- (a) the calling, regulation and conduct of the meeting of the Council;
- (b) the custody of the common seal of the Council; and
- (c) such other matters as are necessary or convenient for the purposes of this Ordinance.

22. Meetings of Councils - (1) A Council shall meet not less frequently than once every month for the transaction of general business, at such time and place as is determined by the Council or, in the case of the first meeting of a Council after a Council election, by the Community Development Office.

(2) At any time after the first meeting following a general election the Council Clerk shall call a special meeting if so requested by the Chairman or upon the request of any two other members.

(3) Subject to the next succeeding subsection, a meeting of a Council shall be open to the public, unless the Council for any special reason otherwise resolves at the meeting.

(4) The Chairman of a meeting of a Council may -

- (a) exclude or require to withdraw from the meeting a person who, in his opinion, is behaving in a disorderly manner; and
- (b) call upon any officer of Police or a Council officer to eject any such person refusing to withdraw from the meeting or any other person refusing to withdraw in accordance with a resolution under the last preceding subsection.

23. Chairman of Meetings of Councils - (1) Subject to the next succeeding subsection, the Chairman, or in his absence the Deputy Chairman, shall preside at all meetings of a Council.

(2) In the absence of the Chairman and the Deputy Chairman, the Councillors present at a meeting of a Council shall elect one of their number to preside for the purpose of that meeting.

24. Quorum and Voting at Meetings - (1) One half of the total membership of the Council, or three members, whichever is the greater number, shall constitute a quorum for the transaction

of business at a meeting of a Council.

(2) Subject to the next succeeding subsection, all acts of a Council and all questions and matters coming before a Council for decision shall be done and decided by a majority of the Councillors present at the meeting and entitled to vote thereon.

(3) The person presiding at a meeting of the Council shall have a deliberative and, in the event of an equality of votes, a casting vote.

25. Minutes – Minutes or the proceedings of all meetings of a Council, including the names of all Councillors present at any such meetings, shall be drawn up and entered in a book to be kept for the purpose, and shall be signed at the next ensuing meeting of the Council by the person presiding at that meeting.

26. Councillors not to vote on certain matters - (1) A Councillor who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Council under which goods or services are to be supplied to the Council shall not take part in discussion on a matter, or vote on a question, in the Council where the matter or question relates directly or indirectly to the subject-matter of that contract.

(2) All questions concerning the application of subsection (1) of this section shall be decided by the Council and a contravention of that subsection does not affect the validity of anything done by the Council.

PART VI – POWERS, DUTIES, ETC. OF COUNCILS

27. General functions of Councils - (1) In addition to any other powers, functions and duties conferred or imposed on it by this Ordinance and subject to any other law in force in Niue, a Council may perform the functions specified in the schedule to this Ordinance.

(2) The Resident Commissioner, acting with the concurrence of the Executive Committee, may direct a Council to perform a function specified in the Schedule to this Ordinance, and it is the duty of the Council to comply with any such direction.

(3) Subject to this Ordinance and to any other law in force in Niue, a Council may, for the purposes of the exercise and performance of its powers, functions and duties -

- (a) organise, finance, engage in or assist any business or enterprise;
- (b) take such action as it deems desirable for the improvement of standards of housing and of agricultural, pastoral, forestry, horticultural or other methods and the economic or social betterment of the Council area or of persons therein, including-
 - (i) the acquisition, by purchase, lease, or otherwise, (but not including compulsory acquisition) of land and buildings;
 - (ii) the development or improvement of land;
 - (iii) the construction of buildings;
 - (iv) cooperation with the Government or other recognised authority or body in the provision of credit facilities; and
 - (v) the acquisition or disposal of land or buildings;
- (c) carry out any works for the benefit of the Council area or of persons therein;

- (d) provide, or cooperate with the Government or other body in providing, any public or social service;
- (e) do all such others matters and things as seem to it necessary or desirable for carrying out and performing its other powers, functions, duties and responsibilities, and any other matters and things ancillary or incidental thereto.

(4) The exercise by a Council of a power conferred by subsection (4) of this section shall not be deemed to be invalid or unlawful merely because -

- (a) it takes place outside the Council area or is related to matters outside the Council area; or
- (b) it is for the benefit of some only of the persons in the Council area or is for the benefit of any such persons jointly with other persons,

if the consent of the Community Development Officer is obtained.

28. Agency functions for Government - Subject to the approval of the Resident Commissioner, a Council may -

- (a) act as an agent of the Government, another Council or any other public body or authority for the collection or payment of moneys on such terms and conditions as to the payment of commission or otherwise as are agreed upon; and
- (b) perform and do such other acts, matters and things on behalf of the Government, another Council or any other public body or authority as are agreed upon, on such terms and conditions as are agreed upon.

Bylaws

29. General power to make bylaws - Subject to this Ordinance a Council may make bylaws, not inconsistent with this Ordinance, Act, Regulations, or any other law for the time being in force in Niue, for the purpose of the exercise and performance of its powers, functions and duties.

30. Notice of bylaw - (1) A Council shall not, except with the consent of the Resident Commissioner, make a bylaw unless reasonable notice of the intention to make the bylaw has first been given to the Community Development Officer.

(2) Notice under the last preceding subsection shall be given in such manner as the Community Development Officer directs.

(3) Failure to comply with the provisions of this section does not invalidate a bylaw.

31. Assent to and commencement of bylaws etc. - (1) No bylaw made by a Council under section 29 of this Ordinance shall become law until it has been assented to by the Resident Commissioner, who, in relation to any such bylaw presented to him for his assent, shall have the same powers as are conferred on him by section 41 of the Niue Act 1966 in relation to Bills passed by the Assembly.

(2) The provision of sections 41 to 46 of the Niue Act 1966, as far as they are applicable and with the necessary modifications, shall apply as if references in those sections to a Bill or to an Ordinance were references to a bylaw, and as if references in those sections to the Assembly were references to a Council.

(3) Any bylaw made by a Council and assented to by the Resident Commissioner shall -

(a) be published in the Gazette;

(b) be laid before the Assembly within 28 days after the making thereof if the Assembly is then in session, or if not, within 28 days after the date of the commencement of the next ensuing session;

(c) be forwarded immediately to the Community Development Officer for deposit in the official records.

32. Model bylaws - Subject to this Ordinance, the Community Development Officer may publish in the Gazette model bylaws, which may be adopted with or without modification by a Council.

Taxation, etc.

33. Power to levy taxes - (1) Subject to the succeeding provisions of this section, a Council may, with the approval of the Resident Commissioner, make bylaws imposing personal taxes, whether at flat rates or on graduated scales (other than a tax based on income) on persons or classes or persons resident within the Council area.

(2) The Resident Commissioner, acting with the concurrence of the Executive Committee may, in relation to a Council, fix a maximum or maxima for any tax or taxes imposed under subsection (1) of this section, subject to such conditions as the Resident Commissioner thinks proper.

(3) Notwithstanding anything in this Ordinance or in any other law in force in Niue, a bylaw made under subsection (1) of this section may provide for a reduction in the amount of any tax payable if it is paid within a period limited by the bylaw, being a period shorter than that otherwise provided for paying that tax.

(4) For the purposes of this section a person shall be deemed to be a resident of a Council area if he has his usual place of abode within that area, notwithstanding his occasional absence therefrom or his occasional absence on leave from his occupation or employment.

34. Review of taxes - (1) There shall be a Tax Review Committee for each Council, which shall consist of the Community Development Officer together with two members of the Council, who shall be elected from among their number:

Provided that the elected numbers shall not be persons engaged in the collection of taxes.

(2) On application from a taxpayer within three months of the tax becoming payable a Tax Review Committee may grant an exemption from taxes on the grounds of hardship or lack of sufficient means, or may on any ground reduce the amount of tax payable by a person to such

amount as to it seems proper.

(3) A person aggrieved by a decision of a Tax Review Committee under the last preceding subsection may appeal to a Judge or Commissioner of the High Court, who may confirm, annul or vary the decision appealed against, and whose decision shall be final.

(4) In any investigation and determination under this section by a Tax Review Committee, or in the hearing of an appeal under the last preceding subsection, as the case may be, it shall not be necessary to observe strict legal procedure or to apply technical rules of evidence, but such relevant evidence as is available, including hearsay evidence, shall be admitted and considered.

35. Fees for services etc. - A Council may, with the approval of the Community Development Officer, by bylaw or otherwise, impose or charge fees for services supplied or rendered, or to be supplied or rendered, by or on behalf of the Council.

36. Exemptions - A Council may, by bylaw, exempt in whole or in part, from the payment of any tax or fee imposed under this Part of this Ordinance, any person the income of whom is exempt from tax under the Niue Island Income Tax Ordinance 1961 or the Niue Island Aid to Revenue Tax Ordinance 1965.

37. Recovery of taxes - Taxes or fees due to a Council under this Part of this Ordinance may be recovered by the Council as a debt.

PART VII - FINANCE

38. Deposit Accounts - (1) The Niue Island Treasury shall open and maintain deposit accounts in the name of each Council established under this Ordinance, and Councils shall pay into these accounts:

- (a) all moneys received from the Government for the purposes of this Ordinance;
- (b) all moneys appropriated by Ordinance for the purpose of carrying out or giving effect to this Ordinance;
- (c) taxes and fees, imposed or charged by the Council; and
- (d) all other moneys received by the Council in or for the performance or exercise of its functions, duties, or powers.

(2) A Council shall, out of the moneys standing to the credit of the account referred to in the last preceding subsection, pay -

- (a) all money payable by the Council in repayment of advances under this Ordinance, and as interest, if any, on those advances;
- (b) the costs, charges and expenses incurred by the Council in the performance of its functions under this Ordinance;
- (c) the allowances, if any, of the Councillors;
- (d) the remuneration of the Council Clerk and Officers and employees of the Council; and
- (e) any other payment which the Council is authorised or required to make by or under this Ordinance or any other law in force in Niue.

39. Discretionary grants from public revenue - In addition to any other moneys which may be paid or advanced to or on behalf of a Council, the Resident Commissioner, acting with the concurrence of the Executive Committee, may from time to time grant to a Council, upon such terms as he thinks fit, any moneys appropriated by Ordinance for the purpose.

30. [sic] Councils may accept offers by Resident Commissioner to advance moneys – A Council may accept an offer by the Resident Commissioner to advance moneys for the purposes of the Council on such terms as are agreed upon between the Council and the Resident Commissioner.

41. Repayment of advances - A Council shall repay, in accordance with the terms under which the advance is made, such portion of an advance as is repayable under these terms.

42. Borrowing - (1) A Council may, with the approval of the Community Development Officer, borrow by means of overdraft or otherwise for the purposes of the Council any sum not exceeding one half of the recurrent revenues of the Council during the previous financial year as certified by the Auditor.

(2) For the purposes of the first financial year of the operation of a Council, the limit fixed by the last preceding subsection shall be deemed to be such limit as is fixed by the Community Development Officer.

43. Estimates - (1) A Council shall, not later than the first day March each year, submit to the Community Development Officer estimates of its receipts and expenditure during the financial year next following, and may from time to time submit supplementary or revised estimates.

(2) Where the Community Development Officer is satisfied that the proposals contained in any estimates, supplementary estimates or revised estimates are likely to be capable of being met from the finances available or likely to become available for the purpose, he shall certify the estimates accordingly to the Council.

(3) Where the Community Development Officer is not satisfied as to the matters referred to in the last preceding subsection, he may, by notice to the Council, refuse certification, in whole or in part, and shall immediately advise the Council of his reasons therefor.

(4) Where the Community Development Officer has withheld certification, in whole or in part, of any estimates, the Council shall not incur expenditure, collect revenue or commence or carry on any work or project in respect of the whole or the part of the estimates of which certification has been withheld, without the consent of the Community Development Officer.

44. Reserve Funds - (1) Subject to this section, a Council shall, unless otherwise authorised by the Community Development Officer, set aside during each financial year not less than one tenth of its recurrent revenue for that year as a reserve.

(2) A Council shall build up and maintain at all times a Reserve Fund equal to fifty per centum of its average annual revenue over the five financial years immediately preceding.

(3) When a Reserve Fund is built up in accordance with the last preceding subsection, the

provisions of subsection (1) of this section apply only to the extent necessary to maintain that Reserve Fund at the level prescribed by the last preceding subsection.

45. Power to invest - A Council may invest any moneys in the Reserve Fund -

- (a) in any securities of, or guaranteed by, the Government of New Zealand or the Government of Niue;
- (b) on deposit in a bank;
- (c) in any bond share or stock issue made by the Niue Development Board in terms of section 11 of the Niue Island Development Ordinance 1966; or
- (d) in any other manner approved by the Resident Commissioner.

46. Accounts - (1) A Council shall keep proper accounts and records in accordance with such instructions as are issued by Community Development Officer under subsection (2) of this section and shall do all things necessary to ensure that all payments out of its funds are correctly made and properly authorised and that adequate control is maintained over the assets of the Council and the incurring of liabilities by the Council.

(2) The Community Development Officer may with the concurrence of the Treasurer of Niue issue written instructions (to be called Financial Memoranda), not inconsistent with this Ordinance and conforming with the principal provisions of the Public Revenues Ordinance 1959 and Instructions issued thereunder for the better control and management of the finance of Councils.

(3) Financial Memoranda shall be observed and obeyed by Councils, Council Clerks and other Council officers.

47. Writing off irrecoverable amounts - A Council may, in such manner and subject to such conditions as may be prescribed by instructions issued under section 46, write off –

- (a) losses or deficiencies from its funds;
- (b) irrecoverable amounts of revenue;
- (c) irrecoverable debts or overpayments; and
- (d) the value of lost, deficient, condemned, unserviceable or obsolete stores.

48. Audit - (1) A Council shall appoint a suitable person, approved by the Community Development Officer, to be the Council Auditor.

(2) One person may be appointed to be the Council Auditor for more than one Council.

(3) An Auditor shall, from time to time, or as required by the instruction issued under section 46, inspect and audit accounts and records of financial transactions of the Council and shall forthwith draw the attention of the Council and the Community Development Officer to any irregularity revealed by the inspection and audit which, in the opinion of the Auditor, is of sufficient importance to justify his so doing.

(4) The Auditor shall, at least once in each year, report to the Council and the Community Development Officer the results of the inspection and audit carried out under the last

preceding subsection.

(5) The Council, a Councillor, Council Clerk, Council Officer or employee of the Council, shall, at all times, give an Auditor every possible assistance, including full and free access to all accounts, records, documents and papers, to enable him to carry out the inspection and audit.

(6) Every Council, Councillor, Council Clerk, Council Officer or employee who refuses to comply with any requirement of an Auditor under the last preceding subsection, or who wilfully obstructs, hinders or resists an Auditor in the exercise of his powers and duties, commits an offence against this Ordinance and shall be liable on conviction to a fine not exceeding fifty pounds (£50).

PART VIII - SUSPENSION AND DISSOLUTION

49. Suspension - (1) Where the business of a Council is being so negligently, inefficiently or badly conducted as not to be for the welfare of the Council area and of persons therein or a Council is not properly carrying out the duties imposed on it by or under this Ordinance or any other law in force in Niue, the Secretary may after receiving a report and recommendation accordingly from the Community Development Officer, by order in writing to the Chairman of the Council, suspend all or any of the powers and functions of that Council.

(2) A suspension under this section shall immediately be reported by the Secretary to the Resident Commissioner and, unless previously confirmed, varied or revoked by the Resident Commissioner acting with the concurrence of the Executive Committee, shall lapse one month after the date of the suspension.

(3) A suspension under this section operates to deprive the Council of the suspended powers or functions during the period of suspension, but does not affect any right, privilege, obligation or liability acquired, accrued or incurred under or in respect of the suspended power or function.

50. Appointment of Manager - (1) Where powers or functions of a Council are suspended under section 49 of this Ordinance, the Secretary, on the recommendation of the Community Development Officer, may appoint a person to be Manager for the Council.

(2) Subject to any directions given by the Resident Commissioner, a Manager has and may exercise on behalf of the Council such of the suspended powers and functions as are specified by the Community Development Officer in writing to the Manager.

(3) Notwithstanding the provisions of subsection (2) of this section, but subject to any directions given by the Resident Commissioner, the Community Development Officer may exercise on behalf of the Council during a suspension under section 49 of this Ordinance, all or any of the suspended powers or functions.

51. Period of Suspension - Subject to subsection (2) of section 49 of this Ordinance, a suspension operates for such period as is fixed by the Resident Commissioner, acting with the concurrence of the Executive Committee for the purpose, or until the Council is abolished under the next succeeding section.

52. Abolition of Councils - (1) During a period of suspension under section 49 of this Ordinance, the Community Development Officer may, with the concurrence of the Secretary, recommend to the Resident Commissioner that a Council be abolished.

(2) Upon receipt of a recommendation under the last preceding subsection, or of his own motion, the Resident Commissioner acting with the concurrence of the Executive Committee may by notice published in the Gazette, abolish a Council.

(3) In a notice under the last preceding subsection or by a subsequent notice, the Resident Commissioner shall appoint a person to be the Liquidator of the Council.

(4) A Liquidator shall proceed to wind up the affairs of the Council in accordance with such directions as are given by the Community Development Officer, and shall dispose of its assets in such manner as the Resident Commissioner determines.

(5) Upon the conclusion of the winding up and disposal of the affairs and assets of a Council under the last preceding subsection, the Liquidator shall make a report thereon to the Resident Commissioner.

(6) Subject to this Ordinance, upon the publication of a notice under subsection (2) of this section or on such later date as is specified in the notice, the powers and functions of the Council cease and determine.

PART IX - COUNCIL STAFF

53. Council Clerks, etc. - (1) For each Council there may be appointed from time to time under Part XXXI of the Niue Act 1966 a Council Clerk and such other Council Officers as may be necessary for the efficient performance of the functions and duties of the Council.

(2) Any person so appointed may hold office in addition to or in conjunction with any office in the Niue Public Service.

54. Employees - In addition to officers appointed in accordance with section 53 of this Ordinance, a Council may employ persons to render temporary or casual service to the Council on such terms and conditions as are determined by the Council with the approval of the Community Development Officer.

PART X - OFFENCES

55. Failure to comply with Rules - Any person who, without reasonable excuse (the proof of which excuse shall be on him), contravenes or fails to comply with a bylaw made under this Ordinance and which is applicable to him, commits an offence against this Ordinance and shall be liable on conviction to a fine not exceeding twenty pounds (£20).

56. Failure to pay taxes - (1) Any person liable to pay taxes under this Ordinance who, without reasonable cause, refuses or fails, after demand, whether oral or in writing, to pay the taxes at or within the time prescribed in the bylaw imposing the tax, commits an offence

against this Ordinance and shall be liable on conviction to a fine not exceeding ten pounds (£10) or to imprisonment for one month.

(2) In a prosecution under this section -

(a) proof that a person has resided in the Council area or was enrolled as an elector for the Council at any time during the period to which the taxes relate is evidence that he resided in the Council area for any period necessary for him to incur liability to pay the taxes; and

(b) the burden of proof -

(i) of reasonable cause within the meaning of subsection (1) of this section;

(ii) that the defendant has been exempted from the taxes, or that the amount of taxes payable by him has been reduced, under section 34 of this Ordinance; and

(iii) of payment of the amount of the tax for which the defendant is liable, lies on the defendant.

(3) A conviction for an offence against subsection (1) of this section does not relieve the offender of the liability to pay the taxes.

57. Obstruction etc. - (1) Any person who -

(a) obstructs or interferes with the lawful exercise by a Council or the Community Development Officer or an officer authorised by him, or a Manager or Liquidator, of any of its or his powers or functions under this Ordinance or any other law in force in Niue; or

(b) without lawful authority (the proof of which authority shall be on him) purports to exercise any powers of a Council, or of a Councillor or Council Officer, or of a Manager, Liquidator or Auditor, commits an offence against this Ordinance and shall be liable on conviction to a fine not exceeding fifty pounds (£50).

(2) Proceedings for an offence against paragraph (b) of the last preceding subsection shall not be instituted without the consent of the Community Development Officer.

58. Application of Fines - All fines imposed for offences against this Ordinance shall be paid to the Council against which the offence was committed and shall form part of the Council revenues.

PART XI - MISCELLANEOUS PROVISIONS

59. Judicial Notice - (1) All courts and persons acting judicially shall take judicial notice of –

(a) all bylaws made by a Council; and

(b) any act, matter or thing of which publication in the Gazette is directed by or under this Ordinance

when so published.

(2) The common seals of all Councils shall be judicially and officially noticed.

60. Public Purposes - The purposes of Village Councils and the purposes of a Council shall be deemed to be a public purpose within the meaning of any law in force in Niue.

61. Regulations - The Resident Commissioner, acting with the concurrence of the Executive Committee, may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and in particular for providing for -

- (a) fees or allowances for Councillors;
- (b) the regulation of the imposition and collection of taxes and fees by Councils;
- (c) the accounts and records to be kept by Councils; and
- (d) the imposition of penalties not exceeding a fine of twenty pounds (£20) or imprisonment for one month, or both, for breaches of the regulations.

[No regulations under this section made before the date of this reprint.]

SCHEDULE

Section 27 (1) and (2)

GENERAL FUNCTIONS OF COUNCILS

The undertaking, provision, construction, maintenance, management, and regulation of -

1. Bush roads (excluding public roads).
2. Road cleaning (on behalf of land owners in the Council area, pursuant to section 82 of the Niue Island Transport Ordinance 1965).
3. Public parks, garden, recreation areas, scenic reports and lookouts, and other public places, reserves and land vested in the Council or placed under its control either permanently or temporarily, including -
 - (a) bathing places;
 - (b) shelter sheds;
 - (c) public decency.
4. Health, sanitation, prevention and suppression of infectious and other diseases, abatement of nuisances, disposal of the dead, including -
 - (a) aid posts, clinics, maternity and child welfare clinics;
 - (b) control of cemeteries;

- (c) public latrines and wash places;
- (d) prevention of pollution of water sources;
- (e) control of noxious animals, vermin and rodents;
- (f) village cleanliness.

5. Building and use and occupation of buildings, places of public amusement of public resort, stalls and stands on road.

6. Markets and commercial enterprises including -

- (a) operation of Council markets and fixing maximum prices of commodities sold in such markets;
- (b) supply of planting material.

7. Village planning, including -

- (a) schemes for any defined part or all of the Council area;
- (b) payment of compensation;
- (c) zoning schemes.

8 Housing schemes (acting in cooperation with the Assembly Housing Scheme)

9. Public Halls, public libraries and community centres, including -

- (a) adult education schemes (in cooperation with the Education Department and Community Development Office);
- (b) equipment for recreational purposes;
- (c) grants sums of money to associations for the promotion of handicrafts, recreation and sports, tourism, or the welfare of the people;
- (d) the foundation, maintenance, operation and encouragement of social, recreational, cultural and community centres and clubs for sporting, social or other lawful purposes.

10. Supply of water, light and power, water conservation and storm water drainage, including-

- (a) entering into agreements with Government or with other Councils for such purposes;
- (b) establishment and maintenance of forest plantations and natural forest reserves;
- (c) regulating the use of public water supplies;
- (d) establish lighting in public places.

11. Pounds and impounding of animals in accordance with the Niue Island Impounding Ordinance 1967.

12. Establishment and maintenance of fish ponds.

13. Agricultural, pastoral, horticultural and forestry industries and the economic [sic] use of

Niuean customary land, including requiring the owners of land to cultivate it to such extent and with such crops as will ensure a sufficient supply of food for their support and the support of those dependent upon them.

14. Omnibus and transport services.

15. Construction and maintenance of sea approaches.

16. Protection of fish resources in accordance with the Niue Island Fish Protection Ordinance 1965, and flora and fauna.

17. Prescribe the duties and functions of any person employed by the Council in connection with any function of the Council.
