



ANALYSIS

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1968, No. 11

An Act to control and standardise building practice

(14 October 1968)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Building Controls and Standards Act 1968.

2. Interpretation - In this Act unless the context requires otherwise -
 "Building" whether temporary or permanent, movable or immovable in addition to its ordinary and usual meaning shall include the following:

- (a) any structure or erection enclosed or partly enclosed within walls or supported on columns whether it has a roof thereto or not;
- (b) any grandstand or structure or erection in which sitting or standing accommodation is provided, whether such grandstand, structure or erection be enclosed or not;
- (c) any retaining wall which either exceeds a height of four feet from the lowest ground level adjoining or is within four feet of

- the boundary of a street or public place:
- (d) any wall:
- (i) being of concrete or masonry and of a height exceeding six feet from the lowest ground level adjoining; or
 - (ii) being of other material and of a height exceeding eight feet from the lowest ground level adjoining; but shall not include a frame work supporting mesh or wire or netting or similar open material;
- (e) Any tank, including its supporting structure:
- (i) which has a capacity of not less than five thousand gallons; or
 - (ii) which having a capacity of four hundred gallons or more is supported at a height of more than six feet from the base of its supporting structure; or
 - (iii) is supported at a height of more than twelve feet from the base of its supporting structure;
- (f) Any part of the building as defined above including any construction for the permanent support or partial support of a building when such construction is erected or placed in position on the site as an independent stage of the erection of a building:
- "Building Controller" means the Building Controller duly appointed under section three of this Act:
- "Committee" means the Building Standards Committee established under section four of this Act:
- "Department" means the Department of Works and Communications:
- "Erection of a building" includes the re-erection of a building and the reconditioning of a building and the making of any alteration, repair or addition to any building heretofore or hereafter erected, and the removal either in whole or in part, of a building from any place in any Island to any place within such Island or any other Island or from one position to another position on the same lot of land, and "Erect" has a corresponding meaning:
- Provided that maintenance work other than structural shall not be deemed repair:
- "Minister" means the Minister in charge of Works and Communications:
- "Specification" means any building specification prescribed by this Act or by regulations under this Act.

3. Establishment of Building Controller - (1) There is hereby established for the purposes of this Act a Building Controller who shall be a public servant and shall be under the authority of the Department of Works and Communications.

(2) The Building Controller shall have charge of the Building Controller's Branch of the Department of Works and Communications with such establishment as shall be necessary for the proper execution of his functions.

- for:
- (3) The Building Controller shall be responsible
- (a) issuing all permits for buildings in the Cook Islands; and
 - (b) for administering this Act and any regulations promulgated under this Act; and
 - (c) advising the Minister as to the practicality and range of projected regulations and reporting on the operation of regulations presently in force.

4. Establishment of Building Standards Committee - (1) The Minister may from time to time, to assist the Building Controller and for the purposes of this Act, appoint a Committee of not more than six members which shall include the Building Controller, who shall be Chairman.

(2) The term of office of members of the Committee other than the Building Controller shall be for such period, not exceeding two years, as the Minister shall appoint. Any member may be re-appointed and may be removed from office at any time by the Minister and may at any time resign his office in writing addressed to the Minister.

(3) The Minister may appoint one of the members to act as Chairman of the Committee at any meeting from which the Building Controller is absent.

5. Meetings of the Committee - (1) Meetings of the Committee shall be held at such times and in such places as the Committee or Chairman may appoint.

(2) Save as may be provided by this Act or by regulations made under this Act, the Committee may regulate its procedure in such manner as it thinks fit.

6. Appointment of Sub-committee - The Committee may from time to time, with the prior approval of the Minister, appoint competent persons, whether members of the Committee or not, to constitute a sub-committee or sub-committees of the Committee and may delegate to any such sub-committee or sub-committees any of its functions and duties.

7. Fees and travelling allowances - The members of the Committee or of any sub-committee shall be paid out of the Cook Islands Government Account such remuneration and travelling allowances as shall be fixed from time to time by the Minister responsible for finance.

8. Functions of the Committee - (1) The principal function of the Committee shall be to make recommendations to the Minister, after due enquiry and investigation, in respect of the following matters, namely:

- (a) the formulation of specifications and the promulgation and application of standard specifications; and
- (b) any other matter which may be referred to the Committee by the Minister or may be considered by the Committee on its own motion.

(2) In addition to its function as an advisory body as provided in the subsection (1) of this section, the Committee shall have the further following functions, namely:

- (i) to assist Departments of State, Island Councils and other public bodies and authorities in the preparation of any specifications required by them;
- (ii) to co-operate with representatives of any industry or with any Department of State, Island Council or any other public body and authority or person with a view to securing an adoption of standard building specifications;
- (iii) any other functions which may be lawfully conferred on it by regulations under this Act or otherwise howsoever.

9. Standard specification - (1) The High Commissioner by Order in Executive Council on the recommendation of the Minister may include in regulations under this Act any specification as a standard specification for the purpose of this Act and may likewise revoke or amend any such specification provided that before so doing the Minister shall obtain from the Committee, or from such sub-committee as may be specified for the purpose a report and recommendation on the specification or any proposed change in respect thereof. Any specification including any international or other overseas specification may be declared to be a standard specification for the purposes of this Act.

(2) Where any Act other than this Act provides or authorises the making of regulations, prescribing any characteristics of building processes or materials, the Minister shall not recommend any specification in respect of that regulation to be a standard specification except with the approval of the Minister who is for the time being charged with the administration of that Act.

(3) The fact that any specification has been declared to be a standard specification shall be conclusive evidence that the requirements of this section have been complied with.

10. Building permit - (1) No person shall erect or commence to erect any building without first obtaining a building permit from the Building Controller unless the building shall be one of a class exempted by regulations from the operation of this Act.

(2) No person shall cause or permit the commencement of the erection or the construction of any building for which a building permit is required if a building permit in that behalf has not first been obtained from the Building Controller.

(3) Any person desiring to erect a structure not being a building as defined may submit particulars to the Building Controller, who shall notify the applicant of any objection he may have to the proposal:

Provided that where structural calculations are required to determine the safety and stability of the proposed work the Building Controller may require the payment of a fee to cover the cost of checking, but in no case a fee greater than one half the fee that would be payable if the structure were a building.

11. Demolition - (1) The Building Controller may with the consent of the Minister in writing demolish any building or structure which has been erected subsequent to the operation of this Act without a building permit having been issued in respect thereof and where a permit is required:

Provided that a notice shall first be given to the person who has constructed, affixed, or provided, or caused to be constructed, affixed or provided, any building or any part of a building, or any work, appliance, or material of any description whatsoever contrary to, or otherwise not in accordance with the provisions of this Act or any regulation or specification made thereunder that he shall open up, lay bare, pull down, take away, or remove such building or part of a building or work, appliance, or material, or cause the same to be pulled down, taken away, or removed, or alter or cause to be altered the same so as to comply with this Act or any regulation or specification made thereunder and such notice shall state the time within which the required operation is to be performed and may be renewed at the discretion of the Building Controller or the Minister from time to time.

(2) The work of demolition shall be carried out by employees of the Department of Works and Communications.

(3) The Building Controller and the Minister shall, in addition to the power granted by this Act, have the same power to require the removal of any structure whether erected before or after this Act as if it were a building, if, in the opinion of the Building Controller or of the Minister, it constitutes a public danger.

(4) The cost of any demolition pursuant to this section and any expenses in connection therewith shall be a debt due to the Crown and recoverable accordingly from the person served with the notice pursuant to subsection (1) of this section.

12. Restoration of building to previous condition - Every person who -

- (a) Having constructed, affixed, or provided, or caused to be constructed, affixed or provided, any building or any part of a building or any work, appliance, or material of any description whatsoever, contrary to, or otherwise than in accordance with the provisions of this Act or regulations or specifications made thereunder; or
- (b) Having omitted to construct, affix or provide any such work, appliance, or material:

AND who does not after notice in writing has been given to him by the Building Controller so to do, either:

- (a) open up, lay bare, pull down, take away, or remove such building or part of a building or work, appliance, or material, or cause the same to be pulled down, taken away, or removed, or alter or cause to be altered the same, so as to comply with this Act or any regulation or specification made thereunder; or

(b) construct, affix, or provide such omitted work, or appliance, or material: shall be guilty of an offence against this Act.

(3) Every such notice shall state the time within which the required operation is to be performed and may be renewed from time to time.

13. Application of fees, etcetera - All fees and other moneys paid under this Act shall be paid into the Cook Islands Government Account and all expenses incurred in respect of the administration of this Act and regulations thereunder shall be paid out of moneys to be from time to time appropriated by the Legislative Assembly out of such account.

14. Officers of the Building Control Office, delegation and technical assistants - (1) There may from time to time be appointed under the provisions of the Public Service Act 1965 and regulations in force thereunder a Secretary of the Committee and such other employees as may be necessary for the efficient carrying out of the functions of the Building Controller and the Committee under this Act.

(2) The Minister may on behalf of the Crown and in consultation with the Building Controller and the Committee, negotiate, under a contract for services, such professional and technical and other assistance as he may consider necessary to enable the Building Controller and the Committee to carry out its functions.

(3) The Building Controller may at any time and from time to time delegate to any officer or person employed in the branch of the Department of Works and Communications in his charge the execution and carrying out of any function or power conferred upon the Building Controller by this Act or any regulation under this Act and every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) Any delegation under this section may be revoked at any time.

(5) The delegation of any function or power by the Building Controller shall not prevent the exercise of that power by the Building Controller or the delegation of the same function or power to another or other person or persons at the same time.

15. Offences - If any person shall, contrary to this Act or any regulation or specification made thereunder:

- (i) do or cause to be done or knowingly permit or suffer to be done or to be concerned in doing anything whatsoever contrary to or otherwise than as provided in this Act; or
- (ii) shall omit, or neglect to do, or knowingly permit or suffer to remain undone, anything which according to the true intent and meaning of this Act, ought to be done by him at the time and in the manner as therein provided; or
- (iii) not refrain from doing anything which he is required to abstain from doing; or
- (iv) knowingly permit or suffer any condition of things to exist contrary to any provision of this Act or any regulations thereunder; or
- (v) refuse or neglect to comply with any notice duly given to him under such provision; or

(vi) obstruct or hinder any officer of the Building Control Office in the performance of any duty to be discharged by any such officer under or in the exercise of any power so conferred upon him; then and in each case every such person as aforesaid shall be deemed to have committed a breach of this Act and shall be guilty of an offence against this Act and subject to the penalties prescribed in the Act or under regulations thereunder:

(vii) Every person who commits an offence against this Act for which no specific penalty is provided shall be liable on conviction to a fine not exceeding two hundred dollars and in the case of a continuing offence to a further fine not exceeding twenty dollars for every day on which the offence is continued.

16. Regulations - (1) The High Commissioner may from time to time by Order in Executive Council, make all such regulations not inconsistent with this Act, as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of the powers conferred by subsection (1) of this section it is hereby declared that regulations may be made under this section for all or any of the following purposes, namely:

- (a) prescribing standard specifications pursuant to section 9 of this Act;
- (b) prescribing the functions of the Committee;
- (c) setting standards as to building practices;
- (d) regulating the manner in which the Building Controller shall carry out his functions;
- (e) regulating the procedure and the manner of reporting and the publication of reports of the Committee;
- (f) regulating the manner as to how the public shall be advised of standards and standard specifications;
- (g) prescribing the classes of buildings which come within or are exempted from the operation of this Act;
- (h) providing for the variation or revocation of any specification or the making of any additions to any specification and regulating the procedure in relation thereto;
- (i) providing the forms and building permits required for the purposes of this Act;
- (j) regulating the distances from dangerous or inflammable substances or installations in which buildings shall not be erected;
- (k) prescribing the fees payable on applications for building permits.

(3) Regulations made under this section may prescribe for offences made under the regulations punishable by a fine not exceeding two hundred dollars and in the case of a continuing offence a further fine not exceeding twenty dollars for every day on which the offence continues.

(4) All regulations made under this section shall be laid before the Legislative Assembly within twenty eight days after the making thereof if the Legislative Assembly is then in session, and, if not, shall be laid before the Legislative Assembly within twenty-eight days after the date of the next ensuing session.
