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1989, No. 12

An Act to consolidate and amend the law relating to child benefit, old age pension and destitute and infirm persons relief, and to provide for the capitalisation of child benefit
(5 May 1989)

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

1. Short Title and commencement - (1) This Act may be cited as the Welfare Act 1989.
(2) Part II of this Act shall come into force on a date to be determined by the Minister and notified by publication in the Gazette.
(3) Section 14 shall be deemed to have come into force on the 1st day of January 1989.

2. Interpretation - In this Act, unless the context otherwise requires -
"Department" means the department of Internal Affairs;
"Minister" means the Minister of Internal Affairs;
"Secretary" means the Secretary of Internal Affairs.

PART I

CHILD BENEFIT

3. Interpretation - In this Part, unless the context otherwise requires -
"Applicant" means a person by whom or on whose behalf an application is made for a benefit;
"Beneficiary" means a person to whom a child benefit is payable;

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"Chief Examiner" means the Chief Examiner of Child Benefits appointed under section 11;
"Examiner" means an examiner of Child Benefits appointed under section 11;
"Pay Period" means a period of 4 complete weeks commencing on such date as the Minister may from time to time determine and publish in the Cook Islands Gazette.

4. Child benefit - (1) Subject to the provisions of this Part, on the application of the father or mother of the child or other person to whom the benefit would be payable under section 8 a child benefit shall be granted in respect of each child under the age of ten years.

(2) For the purposes of this Part the term "child" includes a stepchild, an adopted child and any child who, though not a member of the applicant's family, is maintained as a member of that family but does not include -

- Any child who is not in fact maintained as a member of the family of the applicant; or
- Any child in respect of whom a child benefit is already payable; or
- Any child in respect of whom a child benefit is payable but which benefit has been capitalised for the purposes of obtaining an advance under Part II and such advance has not been repaid as provided for under that Part.

5. Qualifications for child benefit - A child benefit shall not be payable in respect of any child unless the child is resident in the Cook Islands and the Chief Examiner is satisfied that the child is likely to remain in the Cook Islands.

6. Rate of child benefit - (1) Subject to the provisions of this Part, the rate of child benefit payable to any beneficiary shall be that rate as shall from time to time be fixed by Order in Executive Council.

(2) Every Order made pursuant to subsection (1) shall come into force on a date to be specified in that Order (whether that date be before or after the date of its passing) and if no such date is specified, it shall come into force on the date it is passed.

7. Period for which child benefit payable - (1) The child benefit payable in respect of a child shall, subject to subsections (2), (3), (4) and (5), commence on the first day of the pay period in which the child was born, and shall continue until that child is ten years old.

(2) The right of any beneficiary to receive a child benefit on and after the first day of the pay period in which the child was born shall not be affected if the application for the benefit is received within 6 months after the date of birth of the child.

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(3) If an application is received on a date which is more than 6 months after the date of birth of the child, the benefit shall commence from a date 6 months prior to the date on which the application was received.

(4) A child benefit in respect of a child shall cease to be payable at the end of the pay period in which the child attains the age of ten years.

(5) If a child in respect of whom a child benefit is payable dies, or ceases to reside in the Cook Islands, the benefit in respect of that child shall continue until the end of the pay period in which the child dies or ceases to reside in the Cook Islands, and the amount (if any) unpaid on that date may be paid to the person to whom the benefit was payable on that date or, such other person as the Chief Examiner may determine.

8. Person to whom child benefit is payable - (1) Unless otherwise determined by the Chief Examiner, child benefit shall be payable to the mother of the child or children (whether application for the benefit has been made by the mother or father).

(2) The child benefit payable in respect of any child may be paid to the father of that child if the Chief Examiner determines that payment should be made to him.

(3) In any other case the Chief Examiner may, if he thinks fit, determine that the child benefit shall be paid to any reputable person for the benefit of the child or any person having care and control of the child.

9. Child benefit to be expended for maintenance and education of children - All money received by way of child benefit under this Part shall be used towards the maintenance or education of the child or children in respect of whom it is paid, and the Chief Examiner may refuse to grant a benefit or may terminate or suspend the benefit if he is satisfied that the benefit will not be or has not been properly applied.

10. Method of applying for benefit - (1) Application for a child benefit shall be in writing addressed to the Chief Examiner of Child Benefits and shall be in such form with such information and evidence as the Minister may from time to time determine.

(2) In the case of an application for a child benefit from a person living on an island other than Rarotonga, application may be lodged with the Chief Administration Officer who shall transmit the same to the Chief Examiner.

(3) The Chief Administration Officer upon receiving an application pursuant to subsection (2) shall endorse upon the application the date that he received it.

11. Chief Examiner and Examiners - (1) The Minister shall appoint a Chief Examiner of Child Benefits and such other persons as he thinks necessary as Examiners of Child Benefits.

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(2) Persons appointed under subsection (1) shall hold office at the pleasure of the Minister.

(3) A person appointed to be Chief Examiner or an Examiner who is not an employee of the Public Service or of any ad-hoc body of Government shall be entitled to be paid, from funds appropriated for that purpose, such remuneration and allowance as may from time to time be fixed by Order in Executive Council.

12. Investigation of applications - (1) Every application for a child benefit shall be investigated by the Chief Examiner or an Examiner.

(2) Where an application is investigated by an Examiner, the Examiner shall report his findings to the Chief Examiner who shall have the final power of decision as to whether the benefit is payable and if so, to whom.

(3) It shall be the duty of every person to answer all questions put to him by the Chief Examiner or an Examiner concerning any application for a child benefit or concerning any statements contained in any application for a benefit.

(4) Every person commits an offence who demands or accepts from any applicant or from any other person any fee or other consideration for procuring or endeavouring to procure any benefit under this Part.

13. Recovery of excess or improperly procured payments - If any benefit or instalment of a benefit is paid in excess of the amount to which the beneficiary is by law entitled or if a benefit is procured to be paid by fraud or false information the amount so paid or paid in excess may be recovered from the beneficiary as a debt due to the Crown at the suit of the Chief Examiner, or the Chief Examiner may make any necessary adjustments in any instalment of the same or any other benefit thereafter becoming payable to the beneficiary.

14. Lump sum payment in respect of new born child - (1) Notwithstanding anything to the contrary in this Part there shall be payable, in respect of a child in addition to a child benefit, a lump sum allowance not exceeding \$100 where -

- (a) The child is born in the Cook Islands; and
- (b) There is or will be payable in respect of the child a child benefit; and
- (c) Application for such allowance is made within 6 months from the date of the birth of the child.

(2) Every application pursuant to subsection (1) may be made by a person entitled to make application pursuant to subsection (1) of section 4.

(3) Every allowance paid under this section shall be paid to such person who at the date of payment is entitled to have paid to him the child benefit payable in respect of that child pursuant to section 8.

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15. Increase of lump sum allowance - The Queen's Representative may from time to time by Order in Executive Council increase the lump sum allowance payable pursuant to section 14.

16. Offences - Every person who makes any statement knowing it to be false in any material particular, or who wilfully does or says anything or omits to do or say anything for the purpose of misleading or attempting to mislead any officer concerned in the administration of this Part or any other person whomsoever for the purpose of obtaining (for himself or any other person) or which results in himself or any other person obtaining -

- (a) Any benefit under this Part; or
- (b) Any payment from any account administered under this Part;

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months, or to a fine not exceeding \$500 or to both such imprisonment and fine.

17. Proceedings for offences - Notwithstanding anything to the contrary in any other enactment an information for any offence against this Part may be laid at any time within twelve months after the facts alleged in the information have been brought to the knowledge of any officer concerned in the administration of this Part.

18. General penalty for offences - Every person who commits an offence against this Part or any regulations relating to this Part for which no penalty is provided shall be liable on conviction to a fine not exceeding \$200.

PART II

ADVANCES FOR HOUSING PURPOSES

19. Interpretation - (1) In this Part, unless the context otherwise requires -

"Advance", means an advance for housing purposes made under this Part;

"Applicant", means any person who has applied for an advance;

"Beneficiary", in relation to any child benefit means the person to whom the child benefit is payable under Part I;

"Capitalised value", in relation to any child benefit, means the capitalised value of the benefit until the child in respect of whom it is payable attains the age of 10 years, or, where that value is calculated in respect of any earlier age, until the child attains that earlier age, determined under this Part;

"Dwelling", includes all necessary outbuildings and appurtenances in connection with a dwelling;

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"Child benefit", means a child benefit under Part I being a benefit in respect of a child under 10 years of age;

"Land", means an interest in land that is either -

- (a) An estate in leasehold; or
- (b) A Right of Occupation granted pursuant to section 50 of the Cook Islands Amendment Act 1946; or
- (c) A Vesting Order made pursuant to section 23 of the Cook Islands Amendment Act 1960.

"Pay period", in relation to any child benefit, means a period of 4 complete weeks for which pursuant to Part I the benefit is payable.

(2) Where a child benefit is payable in respect of 2 or more children, then, for the purposes of this Part, a separate benefit shall be deemed to be payable in respect of each child.

20. Advances for housing purposes - Subject to the provisions of this Part, on the application of a beneficiary who pursuant to section 25 is eligible to receive such an advance, the Minister may, in his discretion, authorise the making of an advance for any housing purpose to the beneficiary of an amount not exceeding the capitalised value of the child benefit or benefits payable to the beneficiary: Provided that -

- (a) Where application is made for an advance against the capitalised value of the child benefits payable in respect of 2 or more children of the beneficiary, the advance together with the amount of the unpaid balance of any other advance under this Part previously made to the beneficiary shall not exceed \$5,000 or such other sum as may from time to time be fixed by Order in Executive Council;
- (b) No such advance shall be made of an amount which together with the amount of any previous advance or advances under this Part is less than \$500.

21. Housing purposes - Subject to the provisions of section 22, the following purposes are hereby declared to be housing purposes for the purpose of this Part, namely -

- (a) The acquisition of land and the erection thereon of a new dwelling, to be used by the beneficiary as a home for the beneficiary and for the family of the beneficiary;
- (b) The acquisition of land with a dwelling thereon that has not previously been occupied, to be used by the beneficiary as a home for the beneficiary and for the family of the beneficiary;
- (c) The acquisition of land from the Crown with a dwelling thereon, to be used by the beneficiary as a home for the beneficiary and for the family of the beneficiary;

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- (d) The acquisition of land, otherwise than from the Crown, with a dwelling thereon that has been previously occupied, to be used by the beneficiary as a home for the beneficiary and for the family of the beneficiary;
- (e) The erection of a new dwelling on land already owned, to be used by the beneficiary as a home for the beneficiary and for the family of the beneficiary;
- (f) The making of alternations or additions to a dwelling to provide additional accommodation required for the needs of the family of the beneficiary;
- (g) The repayment or partial repayment of money owing under an obligation incurred before or after the coming into force of this Part, in -
 - (i) The acquisition of land with a dwelling thereon or the acquisition of land and the erection of a dwelling thereon or the erection of a dwelling on land already owned; or
 - (ii) The making of alterations or additions to a dwelling to provide additional accommodation required for the needs of the family of the beneficiary, -
if the dwelling is being used and will continue to be used by the beneficiary as a home for the beneficiary and for the family of the beneficiary.

22. Land in respect of which advance may be made - No advance may be made, unless the land in respect of which the advance is made is or will be leased to or settled on the beneficiary, or the beneficiary and the spouse of the beneficiary as tenants in common in equal shares or joint tenants.

(2) The Minister may refuse to make an advance in respect of any land which is or will be used for or in association with any business, profession, or undertaking.

23. Applications for advance - (1) Every application for an advance shall be made by the beneficiary in the prescribed form and shall be lodged with the Department and in the case of a beneficiary who is resident on an island other than Rarotonga, the Chief Administration Officer who shall transmit the application to the Department.

(2) Every beneficiary applying for an advance shall supply in writing such information in support of his application as the Minister requires, and shall declare that the contents of his application are true and correct in every material point.

(3) Where the beneficiary is married, the Minister may require the application to be made jointly by the beneficiary and the spouse of the beneficiary.

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(4) It shall be the duty of every person to make true answers to all questions put to him by the Minister or by the Secretary of the Department or by any officer or agent of the Department in respect of any application for an advance or other matter arising under this Part or any regulations under this Part and without requiring the payment of any fee, to furnish in writing such certificates and information as may be required for the purposes of this Part or of any such regulations.

24. Declarations - Any declaration required to be made for the purpose of this Part may be made before -

- (a) Any person authorised to take a declaration under regulations made pursuant to section 39; or
- (b) Any person authorised pursuant to section 653 of the Cook Islands Act 1915 to take a statutory declaration.

25. Eligibility of beneficiaries - (1) Where the Minister is satisfied that the applicant is eligible to receive an advance and that the purpose for which the advance is applied for is a housing purpose, the Minister may issue to the applicant a certificate of eligibility in the prescribed form stating that the applicant is eligible for an advance and specifying the housing purpose for which an advance may be made, the capitalised value of the child benefit in respect of which an advance may be made, and the date at which the capitalised value of the benefit or benefits has been ascertained:

Provided that a certificate of eligibility shall not be issued to the applicant, unless -

- (a) The child in respect of whom the child benefit is payable has attained the age of one year; and
- (b) The Minister, after taking into consideration the income and assets of the applicant and of the spouse of the applicant, is satisfied that -
 - (i) The application of the future payments of child benefit towards the repayment of any advance would not cause hardship to the applicant; and
 - (ii) The applicant or the spouse of the applicant could not reasonably be expected to arrange finance from any other source; and

(2) Every certificate of eligibility shall continue in force for a period of 12 months, but may from time to time on the application of the beneficiary, be renewed for further periods of 12 months:

Provided that the Minister may cancel any certificate of eligibility at any time where the Minister is satisfied that the beneficiary is no longer eligible for an advance.

(3) The provisions of subsection (1) shall apply with respect to every application for the renewal of a certificate of eligibility as if it were an application for such a certificate:

Provided that the Minister may renew any such certificate on such terms and conditions as the Minister determines.

(4) The decision of the Minister as to whether or not an applicant is eligible for an advance or is no longer eligible for an advance shall be final.

(5) Where a certificate of eligibility is issued to a beneficiary, and so long as it continues in force, the child benefit or benefits shall be withheld from the beneficiary on and from the date specified in the certificate as the date as at which the capitalised value of the benefit or benefits has been ascertained.

26. Advances to beneficiaries - Subject to the limits specified in section 20, an advance for any housing purpose may be made to any eligible beneficiary, upon such terms and subject to such conditions as the Minister determines.

27. Amount of advances - (1) The capitalised value of child benefit for the purpose of an advance shall be that value -

- (a) Calculated having regard to the number of pay periods that will occur from the date on which the benefit ceases to be payable to the beneficiary by reason of the advance until the end of the period for which the benefit is to be applied in repayment of the advance; and
- (b) Reduced by the amount of interest at such rate as the Minister shall determine that the advance shall bear for the duration of the periods referred to in paragraph (a), such interest to be calculated having regard to the outstanding balance of the advance at the end of every third pay period.

(2) An advance may be made of the capitalised value of a child benefit payable in respect of any child for a period expiring at the end of the pay period in which the child obtains the age of 10 years or for any shorter period.

28. Advances to be charged on land - (1) The amount of an advance shall be a charge upon the land in respect of which it is made, and the charge may be registered against the land.

(2) Every charge created under this section shall be taken in favour of Her Majesty the Queen.

(3) Notwithstanding anything in any other Act, where the amount of any advance is applied in discharging or partially discharging any encumbrance existing on the land, the charge created by this section shall have priority over all encumbrances over which the encumbrances so discharged or partially discharged had priority.

(4) Where an advance is applied in payment or partial payment of money owing under an agreement for sale and purchase of an interest in land under which the beneficiary or the beneficiary and the spouse of the beneficiary are purchasing such interest, the charge securing the repayment of the advance shall charge the interest of the beneficiary or, as the case may be, of the beneficiary and the spouse of the beneficiary and shall rank in priority immediately before all other encumbrances against the land.

(5) Notwithstanding that a charge securing the repayment of an advance under subsection (4) shall rank in priority immediately before all other encumbrances, the Minister may, on behalf of Her Majesty the Queen, agree to accept a lower ranking in order of priority.

(6) The provisions of the Property Law Act 1952 shall apply with respect to every such charge as if the charge were a mortgage of the land and as if references to the mortgagor and to mortgagee were references to the person giving the charge and to the charge holder respectively. In particular, without limiting the generality of the foregoing provisions of this subsection, there shall be implied therein on the part of the person giving the charge the covenants by the mortgagor specified in the Fourth Schedule of that Act, and in favour of the charge holder the powers and conditions specified in that Schedule.

(7) Every such charge in favour of Her Majesty the Queen may be enforced, sued upon, varied, or released on behalf of Her Majesty by any person department or body for the time being authorised by the Minister.

29. Child benefit to be applied in repayment of advances - (1) Notwithstanding anything in this Act or any other enactment to the contrary, where an advance is made to a beneficiary, each child benefit in respect of which the advance is made shall -

- (a) In the case of advances calculated on a reduced rate of the child benefit, continue to be payable after taking into account and deducting therefrom the reduced rate of the benefit by which the advance was calculated.
- (b) In the case of advances calculated on the full rate of child benefit, cease to be payable to the beneficiary -

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and, shall continue to be so reduced or not payable, as the case may be, until the child in respect of whom the benefit is payable attains the age in respect of which the capitalised value of the benefit was calculated for the purposes of the advance. On attainment of that age by the child, the advance, to the extent to which it was made in respect of that benefit, shall be deemed to have been repaid.

- (c) In any case where before the child attains that age an event occurs by reason of which the unpaid balance of the advance, or any part thereof, has become repayable, be applied, so long as entitlement to a benefit remains, in repayment of that balance or part and any interest payable thereon until that balance or part and that interest are paid in full -

and thereafter, if the benefit continues to be payable in respect of that child, it shall be paid to the person entitled to receive payment thereof, under section 8.

(2) Where the child in respect of whom a child benefit is payable dies after the expiration of one year from the date of the advance and before attaining the age in respect of which the capitalised value of the benefit was calculated for the purpose of the advance and before any event has occurred by reason of which the unpaid balance of the advance or any part thereof has become repayable, any advance, to the extent that it was made in respect of that benefit, shall be deemed to have been repaid on the death of the child.

30. Death of beneficiary or spouse of beneficiary - Where an advance is made in respect of a child benefit, and the beneficiary and the spouse (if any) of the beneficiary at the date of the advance, both die before the child in respect of whom the benefit was payable attains the age in respect of which the capitalised value of the benefit was calculated for the purposes of the advance, and before the occurrence of any event by reason of which the unpaid balance of the advance, or any part thereof, has become repayable, the advance, to the extent of which it was made in respect of the child benefit payable in respect of that child, shall, if the Minister so determines, be deemed to have been repaid as at the date of the death of the beneficiary (in the absence of there being a spouse of the beneficiary) or the date of death of the survivor of the beneficiary and spouse of the beneficiary as the case may be.

31. Repayment of advances - (1) Subject to the provisions of section 34, the unpaid balance of an advance shall be repayable upon demand signed by the charge holder or by the person or body entitled to enforce the charge under section 28 or by any agent or servant or clerk of the charge holder

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or of that person, served upon the beneficiary and where necessary the spouse of the beneficiary, either personally or by posting the notice in a duly registered letter addressed to him at his usual or last known place of abode in the Cook Islands.

(2) Without limiting the circumstances in which such a demand may be made, demand may, if the Minister so determines, be made -

- (a) On the occurrence of any event (other than the death after the expiration of one year from the date of the advance of a child in respect of whom the benefit was payable) by reason of which the benefit or any part thereof would have ceased to be payable to the beneficiary if the advance had not been made; or
- (b) On the transfer or lease or other disposition by the beneficiary or by the beneficiary and the spouse of the beneficiary of the land in respect of which the advance was made or the occurrence of any event by which the beneficiary ceases to be the owner or one of the owners of the land; or
- (c) On the beneficiary, or any child in respect of whom the benefit to which the advance relates was payable, ceasing to occupy as a home the land in respect of which the advance was made; or
- (d) On the conviction of the beneficiary or the spouse of the beneficiary of any offence against this Part or of any offence relating to a child benefit in respect of which the advance was made.

(3) The fact that any such demand is made by the charge holder or by the person entitled to enforce the charge under section 28 or by any agent or servant or clerk of the charge holder or of that person shall be sufficient evidence of the authority of the charge holder or of that person, agent, servant, or clerk to make the demand.

(4) Where the child in respect of whom a child benefit was payable dies within one year after the date of an advance in respect of that benefit, the unpaid balance of the advance, unless it is sooner repaid by the beneficiary, shall remain charged against the land until the repayment is required by the charge holder.

(5) For the purposes of this Part, the date of an advance shall be deemed to be the date on which the child benefit in respect of which the advance was made ceases to be payable to the beneficiary by reason of the advance.

32. Calculation of unpaid balance of advance - For the purposes of this Part, the amount of the unpaid balance of an advance shall be that amount equal to the capitalised value of the benefit in respect of which it was made for the number of pay periods of the advance less the number of pay periods

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that have lapsed since the date of the advance, calculated, as if for an advance in the first instance, from the end of the pay period during which the event occurred which results in the advance becoming repayable.

33. Resumption of payment of benefit - Notwithstanding anything in section 29, where an advance has become repayable, the Minister may, in his discretion, at any time resume payment of the benefit to such other person or persons as the Minister determines, without releasing the beneficiary or the spouse of the beneficiary from any liability to repay the unpaid balance of the advance and any interest payable thereon or releasing the charge over the land owned by the beneficiary or the beneficiary and the spouse of the beneficiary.

34. Repayment of advance where death of child caused by parent - (1) Notwithstanding anything in section 29 where the child in respect of whom an advance has been made dies after the date of the advance and before attaining the age in respect of which the capitalised value of the benefit was calculated for the purpose of the advance, and the death of the child is caused by an offence of which the beneficiary or spouse of the beneficiary is convicted, the Minister may apply to a Judge for an Order declaring that the unpaid balance of the advance at the date of death of the child became repayable on that date.

(2) On any application under section (1) the Judge shall, having regard to the conduct of the beneficiary or spouse of the beneficiary and to all the circumstances of the case -

- (a) Make an Order declaring that the unpaid balance of the advance became repayable on the death of the child; or
- (b) Make such other Order as he thinks fit so as to ensure that any person who was so convicted or whose conduct, in the opinion of the judge, contributed to the death of the child will not derive any benefit from the death of the child; or
- (c) Make an Order declaring that the unpaid balance of the advance shall be deemed to have been repaid on the death of the child.

35. Recovery of unpaid balance - The unpaid balance of an advance that has become repayable and any interest thereon may be recovered as a debt due to the Crown at the suit of the Minister.

36. Financial provisions - Every advance shall be made, out of the Public Account, from money appropriated by Parliament for the purpose.

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37. Exemption from fees - No fee shall be payable under any Act in respect of registration of any document required for the purpose of registering or releasing (whether wholly or in part) any charge created under section 28.

38. Offences and penalties - (1) Every person commits an offence against this Part who -

- (a) In relation to any application for an advance, whether to himself or to any other person, makes a statement knowing it to be false in any material particular or otherwise wilfully attempts to mislead any officer concerned in the administration of this Part or any other person whomsoever; or
- (b) Being a beneficiary or the spouse of a beneficiary to whom an advance has been made -
 - (i) Fails, within a reasonable time after being required so to do, to supply in writing to the Minister any information reasonably required by the Minister for the purpose of ascertaining whether or not the conditions on which the advance was made have been fulfilled or whether or not any event has occurred by reason of which the advance of any part thereof has become repayable; or
 - (ii) Supplies any such information knowing it to be false or misleading in any material particular; or
- (c) Except in a case to which paragraph (a) or paragraph (b) of this subsection applies, wilfully fails to comply with any of the requirements of subsection (4) of section 23.

(2) Any person who commits an offence against paragraph (a) or paragraph (b) of this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$500.

(3) Every person who commits an offence against paragraph (c) of subsection (1) of this section is liable on conviction to a fine not exceeding \$200.

39. Regulations - The Queen's Representative may from time to time by Order in Executive Council, make regulations providing for such matters as are necessary for giving full effect to the provisions of this Part and for the due administration thereof.

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PART III

OLD AGE PENSION

40. Persons over sixty years of age entitled to a pension (1) Every person residing in the Cook Islands who is of the age of sixty years or more and who is qualified by the provisions of this section shall on making application for payment of a pension be entitled to a pension as provided in this Act.

(2) No person shall be qualified to receive a pension unless -

- (a) in the case of a person who was not born in the Cook Islands neither of whose parents is a Cook Islands Maori, he has actually resided whether continuously or intermittently in the Cook Islands for a total of twenty years during his life; or
- (b) in the case of a person either of whose parents is a Cook Islands Maori, he has actually resided whether continuously or intermittently in the Cook Islands for a total of ten years during his life; and
- (c) has actually resided in the Cook Islands for a continuous period of not less than one year immediately preceding his application to receive a pension.

(3) For the purposes of subsection (2), actual residence in the Cook Islands shall not be deemed to have been interrupted if the applicant satisfies the Secretary that -

- (a) during the whole of the applicant's absence, the applicant's family and his usual place of abode was in the Cook Islands; or
- (b) the absence was in respect of service by the applicant in any of Her Majesty's military forces or in any organisation attached to such forces; or
- (c) the absence was for the purpose of the applicant attending weddings, traditional haircutting ceremonies, family reunions, 21st birthday celebrations and to undergo medical or surgical treatment and the Secretary is satisfied that there was good and sufficient reason for the applicant leaving the Cook Islands to obtain such treatment;
- (d) the absence was for a period of less than 6 months.

(4) In computing for the purposes of this section the period of actual residence of an applicant in the Cook Islands, any period of absence allowed under subsection (3) shall be counted as a period of actual residence and not as a period of absence therefrom.

(5) Payment to any person who is in receipt of a pension shall cease upon that person being absent from the Cook Islands for any continuous period in excess of 6 months.

(6) Any person whose pension ceases to be paid pursuant to subsection (5) may reapply for payment to him of a pension if he again becomes qualified to receive a pension.

(7) Notwithstanding anything to the contrary in this Part, no person shall be entitled to receive a pension under this section, where that person receives any pension from any other country or territory outside the Cook Islands where, in the opinion of the Secretary, the pension is substantially of the same nature as an Old Age Pension under this Part.

[Amended Act 1991-92/34]

41. Rate of pension - Pensions shall be paid at such rate as shall be fixed from time to time by Order in Executive Council.

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42. Age of applicant - The age of any applicant for a pension under this Act shall be verified and certified by the Registrar of Births at Rarotonga whose decision shall be final.

43. Review of pension - (1) In the event of any change in the circumstances of a person to whom a pension has been granted during the period for which the pension has been granted, the Minister may in his discretion review the pension and may thereupon terminate or suspend the pension or may vary the amount thereof.

(2) Every person to whom a pension has been granted shall advise the Minister without delay of any material change in his circumstances that may affect the amount of pension payable.

(3) If a person to whom a pension has been granted fails so to advise the Minister as required by subsection (2), the Minister may in his discretion recover from that person the amount of any pension paid in excess of the amount that would have been paid had such person so advised the Minister.

PART IV

DESTITUTE AND INFIRM PERSONS RELIEF

44. Interpretation - In this Part, unless the context otherwise requires -

"Blind persons" means a person so blind as to be unable to perform any work for which eyesight is essential;

"Director General" means the Director General of Health of the Cook Islands and includes such other Medical Officer to whom the Director General may from time to time delegate the duties imposed upon him under this Part;

"Committee" means the Destitute and Infirm persons Relief Committee established by this Act.

"Destitute Person" and "Infirm Person" means any person unable permanently to support himself by his own means or labour and includes persons with dependents where such dependants are unable through infirmity or age to support themselves by their own means or labour. For the purposes of this Part, the expression "Infirm Person" also includes any blind person;

"Inspector" means the Inspector of Destitute and Infirm Persons Relief appointed under section 45.

[Amended Act 1989/34]

45. Destitute and Infirm Persons Relief Committee - (1) For the purposes of this Part there shall be a Committee called the Destitute and Infirm Persons Relief Committee.

(2) The Committee shall consist of -

- (a) The Secretary of the Department;
- (b) The Director General of Health; and
- (c) A person appointed by and at the pleasure of the Minister who shall be known as the Inspector for Destitute and Infirm Persons Relief.

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(3) The Director General of Health shall be Chairman of the Committee and the Secretary of the Department shall be Deputy Chairman.

(4) The Chairman shall preside at all meetings at which he is present.

(5) In the absence of the Chairman the Deputy Chairman shall preside.

(6) At any meeting the Chairman or as the case may be the Deputy Chairman shall have a deliberative vote and in the case of an equality of votes shall also have a casting vote.

46. Meetings of Committee - (1) The Committee shall sit at such times and places as it may from time to time determine.

(2) At any meeting of the Committee two members shall form a Quorum.

47. Powers of Committee - (1) The Committee shall have power to co-opt not more than two further members from time to time and for such time as it shall determine. The co-opted member or members shall be entitled to attend meetings and deliberations of the Committee but shall not have a vote.

(2) With the written consent of the Minister the Committee may from time to time either generally or particularly delegate to any of its members or any officer of the Department such of its powers as the Committee determines.

(3) Subject to the provisions of this section and to any general or special directions given or conditions attached by the Committee, the person to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section.

(4) 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 of the contrary.

(5) Any delegation under this section may be at any time revoked by the Committee in whole or in part and no such delegation shall prevent the exercise of any power by the Committee.

48. Investigation of applications for relief - (1) Every application for relief under this Part of this Act shall be investigated by the Inspector who shall report to the Committee thereon for final deliberation and decision.

(2) It shall be the duty of every person to answer all questions put by the Inspector in connection with an application.

(3) Every person commits an offence who demands or accepts from any applicant or from any other person any fee or other consideration for procuring or endeavouring to procure any grant of relief under this Part.

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49. Method of applying for relief - Application for relief under this Part shall be in writing addressed to the Committee and shall be in such form with such information as the Committee may from time to time determine.

50. Provision for relief - (1) On approval of any application the Committee shall make a grant in the first instance for a period not exceeding three months.

(2) On the expiry of three months and on the expiry of each succeeding period of three months for up to one year in total application for continuation of the grant may be made by the recipient in the same manner as the original application.

(3) After four successive successful applications the Committee may make grants for longer periods not exceeding one year on such terms as it shall decide.

(4) Payments under any grant shall cease immediately on the death of the person for whose relief the grant was made.

(5) Payments under any grant shall be paid at such intervals as the Committee may decide, and may be for any amount not exceeding such maximum amount as may from time to time be prescribed.

(6) Where an applicant owns any interest in land, the Committee may disregard such interest to such extent as the Committee deems fit if the Committee is of the opinion that it is wholly or partly unavailable to meet the needs of the applicant.

(7) On receipt of each application the Committee shall investigate the possibility of rehabilitating the applicant or of aiding the applicant to find employment or of aiding the applicant by advice. If an applicant shall refuse or neglect to act on the advice or instructions of the Committee without reasonable excuse his application shall be declined or as the case may be his grant shall be determined forthwith.

(8) In considering any application for relief under this Part the Committee shall have regard to the provisions of Part XX of the Cook Islands Act 1915 and no grant shall be made under this Act if the Committee is of the opinion that proceedings on behalf of the applicant should first be taken for maintenance under the provisions of that Act and the Committee is hereby empowered in the name of the Inspector to make application to the High Court and to prosecute any application which may be made or instituted by any other person pursuant to section 543 of the Cook Islands Act 1915.

PART V

GENERAL PROVISIONS AS TO PARTS III AND IV

51. Moneys payable out of the Public Account - There shall from time to time be paid out of the Public Account from money appropriate by the Parliament for the purposes -

(a) All money required to be expended in providing pensions or in granting any relief pursuant to Part III and Part IV; and

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- (b) All other money that may be appropriated by Parliament for the purposes of Part III and Part IV or that may be appropriated for any purpose incidental or related to the purposes of Part III and Part IV.

52. Recovery of payments in excess - If any pension or grant of instalment thereof, or any money is paid to any person pursuant to the provisions of Part III or Part IV in excess of the amount which ought to have been paid to such person, the amount so paid in excess may be recovered from such person as a debt due to the Crown or the Minister may direct any necessary adjustments in any instalments of the same or any other pension, grant or other money thereafter becoming payable.

53. Offences - Every person commits an offence and shall be liable on conviction to a fine not exceeding \$200 or to imprisonment not exceeding three months who, for the purpose of obtaining any pension or grant of money under Part III or Part IV for himself or for any other person makes any false statement to or otherwise misleads or attempts to mislead any officer concerned in the administration of either Part III or Part IV or any other person, whomsoever.

54. Regulations - (1) The Queen's Representative may from time to time by Order of the Executive Council make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of Part III and Part IV and for the due administration thereof.

(2) Regulations made under this section may prescribe for offences against such regulations punishable by a term of imprisonment not exceeding three months or a fine not exceeding \$200 or both.

PART VI

MISCELLANEOUS

55. Delegation of powers of Minister - (1) The Minister may from time to time, either generally or particularly, delegate to the Secretary or other officer of the Department such of his powers under this Part or under any regulations under this Part as the Minister determines.

(2) Subject to the provisions of this section and to any general or special directions given or conditions attached by the Minister, the officer to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

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(3) 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 made to a specified officer or to officers of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

(5) Any delegation under this section may be at any time revoked by the Minister, in whole or in part, and no such delegation shall prevent the exercise of any power by the Minister.

(6) Any applicant or beneficiary affected by any decision made by any officer in the exercise of any powers conferred on him by delegation under this section may, within 3 months after the communication of the decision to him, appeal therefrom to the Minister.

(7) The Minister shall review every decision appealed from as aforesaid, and may at any time, of his own motion, review any other decision made by any officer in the exercise of any powers conferred on him by delegation under this section, and in any such case the Minister may confirm, vary, or revoke the decision.

(8) In the exercise of any powers functions and discretions under this Act the Secretary and every officer of the Department shall comply with any general or special direction given to him or them in writing by the Minister.

56. Power to exempt requirement for charge on land - Notwithstanding any of the provisions of Part II of this Act the Minister may, in respect of any advance made under that Part to exempt such advance and the applicant for such advance from the provisions of section 28, subject however to such conditions (including a condition that the advance be charged on property other than land) as the Minister may in the circumstances deem appropriate.

57. Savings - The Orders set out in the First Schedule shall, notwithstanding the repeal of those enactments set out in the Second Schedule, continue in force as if those orders were passed pursuant to the provisions of this Act.

58. Repeals - The enactments set out in the Second Schedule are repealed.

*Cook Islands Laws*FIRST SCHEDULE

(Section 56)

Child Benefit Amendment Order 1988

Aged, Destitute and Infirm Persons Relief Order 1989

SECOND SCHEDULE

(Section 57)

Enactments Repealed

Child Benefit Act 1978

Child Benefit Amendment Act 1983

Aged Destitute and Infirm Persons Relief Act 1966

Aged Destitute and Infirm Persons Relief Amendment 1969

Aged Destitute and Infirm Persons Relief Amendment 1971-72

Aged Destitute and Infirm Persons Relief Amendment 1972

Aged Destitute and Infirm Persons Relief Amendment 1975

Aged Destitute and Infirm Persons Relief Amendment 1976

Aged Destitute and Infirm Persons Relief Amendment 1977

Aged Destitute and Infirm Persons Relief Amendment 1979

Aged Destitute and Infirm Persons Relief Amendment 1980

Aged Destitute and Infirm Persons Relief Amendment 1986

Aged Destitute and Infirm Persons Relief Amendment 1988
