Summary Proceedings Amendment Regulations 2006

Preamble

At Wellington this 28th day of August 2006

Pursuant to section 212 of the Summary Proceedings Act 1957, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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1 Title

These regulations are the Summary Proceedings Amendment Regulations 2006.

2 Commencement

(1) Regulation 5 comes into force on 1 March 2007.

(2) The rest of these regulations come into force on 10 October 2006.

3 Principal regulations amended

These regulations amend the Summary Proceedings Regulations 1958.

4 Interpretation

Regulation 2 is amended by inserting the following definition in its appropriate alphabetical order:

"**fine**, for the purposes of these regulations (including any prescribed form, has the meaning set out in section 79 of the Act and, for the avoidance of doubt, includes—

"(a) any amount that is required to be paid under a sentence of reparation; or

"(b) any amount that is required to be paid under any order of reparation as defined in section 145D of the Sentencing Act 2002."

5 New regulation 15B substituted

Regulation 15B is revoked and the following regulation substituted:

"**15B Reminder notice for infringement offence**

"(1) The particulars of a reminder notice referred to in section 21(4)(a) of the Act are—

"(a) the number of the reminder notice; and

"(b) the name and address of the informant; and

"(c) the full name and full address of the defendant; and

"(d) details of the alleged infringement offence, including the date, time, place of the offence, the enactment and provision contravened, and the registration number of the vehicle (if any) used in the offence; and

"(e) the infringement fee, or the amount of the infringement fee remaining unpaid, other fees, and any other penalties specified in respect of the alleged offence; and

"(f) the name or number (if any) of the officer who issued the infringement notice.

"(2) The particulars of a reminder notice referred to in section 21(4)(b) of the Act are—

"(a) the date and method of service of the infringement notice; and

"(b) the date and method of service of the reminder notice; and

"(c) the full address at which the reminder notice was served.

"(3) The particulars of a reminder notice referred to in section 21(4)(c) of the Act are—

"(a) the defendant's date of birth; and

"(b) the defendant's gender; and

"(c) the defendant's occupation; and

"(d) the defendant's telephone number or numbers; and

"(e) the defendant's driver licence number (if a vehicle was used in the offence).

"(4) The particulars specified in subclause (3) apply only if known.

"(5) The particular specified in subclause (3)(e) applies only if relevant."

6 Applications for correction of irregularities in proceedings for infringement offences

Regulation 15E is amended by omitting "shall be accompanied by a statutory declaration" and substituting "must be".

7 Fee and expenses in respect of enforcement of fine

Regulation 15K(1) is amended by omitting "a fee of $100 shall be" and substituting "the fee specified in Schedule 2 is".

8 New regulation 15M substituted

Regulation 15M is revoked and the following regulation substituted:

"**15M Receipt for payment of fine, etc**

"(1) Subclause (2) applies to a sum levied by or paid to any member of the police or a bailiff under a warrant.

"(2) The member of the police or the bailiff who receives any amount in or towards payment of the sum described in subclause (1) must give to the defendant or the person making

the payment a receipt for the amount as soon as is reasonably practicable after receiving the amount.

"(3) Subclause (4) applies to a sum paid in or towards a Court fee, fine, costs, or other money payable on an information or complaint or on a conviction or order made by a Court.

"(4) The following persons must, on receiving any amount in or towards payment of the sum described in subclause (3), give to the defendant or other person making the payment a receipt for the amount as soon as is reasonably practicable after receiving the amount:

"(a) if the amount is paid to the Registrar, the Registrar; or

"(b) if the amount is paid to a person nominated under section 208(2)(b) of the Act, that person.

"(5) Subclause (4) does not apply if a receipt has already been given under subclause (2)."

9 Schedule 1 amended

Schedule 1 is amended by revoking forms 10, 26, 27, and 57 and substituting the forms 10, 26, 27, and 57 set out in the Schedule of these regulations.

10 Schedule 2 amended

Schedule 2 is amended by inserting the following item after item 7:

(8)	For enforcement of a fine, in accordance with regulation 15K	100

Schedule

r 9

New forms 10, 26, 27, and 57 substituted

"Form 10

"Reminder notice in respect of infringement offence"

"

Form 10—*continued*

(Front page)

Reminder notice in respect of infringement offence
Section 21(2) and (3C)(b), Summary Proceedings Act 1957

Reminder Notice No:
CR No:

Informant
Name:
Address:

Details of person to whom infringement notice issued

Full name:	Date of birth:
Full address:	Gender:
Telephone number(s):	Occupation:

Details of alleged infringement offence
The informant alleges that you committed an infringement offence:
On: [*date*] At: [*time*]
At: [*place*]
In that you: [*specify details of offence*]
The offence is one against [*specify enactment and provision contravened*].
Name or number, if any, of officer who issued notice: [*specify*]

Penalty for offence
The penalty for the offence is:
Infringement fee: $

Amount of infringement fee unpaid:	$
Other fees [*specify if any*]:	$
Total payable:	$

Other penalties [*specify if any*]:

Form 10—*continued*

Payment of infringement fee

The infringement fee was payable to the informant within 28 days after [*specify date infringement notice was delivered personally or posted*].

The infringement fee remains payable to the informant at [*specify informant's address at which fee may be paid*].

The last day for payment is 28 days after service of this notice [*specify date*].

Payments by cheque should be made out to [*specify name of payee*] and crossed "Not Negotiable".

Service details

[*To be provided for filing in Court.*]

Infringement notice

Served by personal service (*or* registered post *or* ordinary post)

On: [*date of service*]

Reminder notice

Served by personal service (*or* registered post *or* ordinary post)

On: [*date of service*]

At: [*full address at which reminder notice served*]

Important

Queries or other correspondence related to the offence must be directed to the informant at the address specified above.

Please include in all written correspondence—

- the date of the alleged infringement offence; and
- the number of this reminder notice; and
- your full name and full address for replies.

If you wish to deny the offence or wish to have a Court consider submissions in respect of the offence, follow the directions in paragraphs 2 to 4 of the notes below.

Please read the notes below. If, after reading those notes, you do not understand something in them, you should consult a lawyer immediately.

Form 10—*continued*

(Back page)

Notes to defendant

You have not paid the infringement fee described on the front page, or asked for a hearing, within 28 days after you were served with the infringement notice. That is why you have been served with this reminder notice.

Note: If, under section 21(3A) or (3C)(a) of the Summary Proceedings Act 1957, you enter or have entered into a time to pay arrangement with the informant in respect of an infringement fee payable by you, paragraphs 3 and 4 below do not apply and you are not entitled either to request a hearing to deny liability or to ask the Court to consider any submissions (as to penalty or otherwise) in respect of the infringement.

Payment of infringement fee

1 If you pay the infringement fee or the amount of the infringement fee remaining unpaid not later than the last day for payment, no further enforcement action will be taken against you. Payments should be made to the informant at the address shown on the front page of this notice.

Further action

2 If you wish to raise any matter relating to the circumstances of the alleged offence or to seek further information about the alleged offence, you should do so by writing to the informant at the address shown on the front page of this notice not later than the last day for payment.

3 If you wish to deny liability in respect of the alleged offence, you should, not later than the last day for payment, write to the informant at the address shown on the front page of this notice requesting a hearing in respect of the offence. The informant will then decide whether to commence court proceedings. If the informant does decide to commence court proceedings you will be served with a notice of hearing setting out the place and time at which the matter will be heard by the Court.

Note: If the Court finds you guilty of the offence, costs will be imposed in addition to any penalty.

Form 10—*continued*

4 If you admit liability in respect of the alleged offence but wish to have the Court consider submissions as to penalty or otherwise, you should, not later than the last day for payment, write to the informant at the address shown on the front page of this notice requesting a hearing in respect of the offence and in that same letter—

(a) admit liability in respect of the offence; and

(b) set out the submissions that you would wish to be considered by the Court.

The informant will then, if it decides to commence court proceedings in respect of the offence, file your letter with the Court. You are not entitled to make oral submissions to the Court if you follow this course of action.

Note: Costs will be imposed in addition to any penalty.

Non-payment of infringement fee

5 If you do not pay the infringement fee or the amount of the infringement fee remaining unpaid and do not request a hearing in respect of the alleged infringement offence not later than the last day for payment, you will become liable to pay costs in addition to a fine (if the informant decides to commence court proceedings against you). The fine will be equal to the amount of the infringement fee or the amount, of the infringement fee remaining unpaid.

Defence

6 You will have a complete defence against proceedings relating to the alleged offence if the infringement fee, or the amount of the infringement fee remaining unpaid, is paid to the informant at the address shown on the front page of this notice not later than the last day for payment. Late payment or payment made to any other address will not constitute a defence to proceedings in respect of the alleged offence.

Note: All payments, all queries, and all correspondence about this reminder notice must be directed to the informant at the address shown on the front page of this notice.

“Form 26
“Attachment order where fine remains unpaid”

“

Form 26—*continued*

Sections 87(1)(b), 88(3)(a), and 103, Summary Proceedings Act 1957

PPN No:

To [*full name of employer*]
[*full address of employer*]

1 The Court is satisfied that you are the employer of the defendant [*full name of defendant*] of [*full address of defendant*].

2 The defendant has an outstanding fine (*or* outstanding fines).

3 The Court has made this attachment order. The Court orders that, as the defendant's employer, you must make the following deductions from the defendant's salary or wages to recover the outstanding fine(s):

Weekly amount	**Number of weeks**	**Plus final weekly amount of**	**Total amount**
[*specify*]	[*specify*]	[*specify*]	[*specify*]

4 The specified weekly amount accrues weekly on each [*specify day of week*]. Whenever any amount of salary or wages becomes payable to the defendant, you must deduct from the salary or wages all specified weekly amounts that have accrued since the date of the previous deduction.

5 However, if in any week, the deduction of the specified weekly amount would reduce the net earnings paid to the defendant below the protected earnings rate of [*specify protected earnings rate*] per week, you must adjust or cancel the amount of the deduction so that the defendant receives the protected earnings rate.

You must advise the Registrar of the Court immediately if you have to reduce or cancel the deductions under this order.

6 The first deduction must be made from the first amount of salary or wages that becomes payable to the defendant after you receive this order.

7 You must continue to make deductions until [*specify date the order expires*] or until you are advised by the Court that this attachment order has been varied, suspended, or cancelled.

8 This order replaces any existing attachment order for unpaid fines owed by the defendant.

Form 26—*continued*

9 You must pay all deductions—

- to the Registrar of the Court; or
- into the Ministry of Justice trust account, the details of which are [*specify details*].

All amounts deducted must be paid by the 20th day of the month following the month in which the deduction was made.

10 You must notify the Court within 7 days if the defendant leaves or is dismissed from your employment.

Date:

.....

Registrar

Notes to employer

1 Section 79 of the Summary Proceedings Act 1957 defines—

(a) salary or wages to include—

(i) a retiring allowance or pension or other payment of a similar nature:

(ii) all payments of weekly compensation made by the Accident Compensation Corporation under the Injury Prevention, Rehabilitation, and Compensation Act 2001:

(iii) a bonus or an incentive payment:

(iv) a payment of commission:

(v) a payment in consideration of work performed under a contract for services:

(vi) a benefit; and

(b) employer to include a person or body making payments of the kind referred to in paragraph (a).

2 Deductions must be made by you from all salary or wages payable to the defendant while this order is in force, whether or not the salary or wages are payable to the defendant under a contract of employment entered into before or after this order was made.

Form 26—*continued*

3 This attachment order has priority over any assignment or charge created by the defendant (whether before or after the date of this order). For example, deductions under this order from the defendant's salary or wages must be made before or instead of deductions for insurance premiums or loan repayments.

4 The following have priority over this attachment order:

(a) any attachment order or deduction notice made or given or issued under—

(i) the Social Security Act 1964:

(ii) the Family Proceedings Act 1980:

(iii) the Child Support Act 1991:

(iv) the Tax Administration Act 1994:

(b) any recovery of payment under section 86 of the Social Security Act 1964.

If the total of the weekly deductions to be made from the defendant's salary or wages under this attachment order and any attachment orders or deduction notices described above would reduce the net earnings paid to the defendant below the protected earnings rate, you must adjust or cancel the amount of the deduction specified in this order so that the defendant receives the protected earnings rate.

5 You cannot charge a fee for the administration of this order.

6 If you do not make the deductions required and pay the amount deducted to the Registrar of the Court or into the Ministry of Justice trust account in accordance with this order, that amount becomes a debt due by you to the Crown and could be recovered by the Crown in a court action against you.

7 It is an offence under sections 106 and 106A of the Summary Proceedings Act 1957 to—

(a) fail, without reasonable excuse, to comply with this order:

(b) dismiss the defendant or alter the defendant's position in your business or undertaking to the defendant's prejudice by reason of your—

Form 26—*continued*

(i) learning that the defendant has outstanding fines; or

(ii) receiving this order; or

(iii) becoming aware that an attachment order is being or has been made in respect of the defendant.

However, this does not affect your right to take disciplinary action against the defendant for breaching a condition of the defendant's employment that relates to—

(a) the commission of an offence; or

(b) the failure to pay any fine in full before enforcement action is due.

8 If you do not understand your obligations under this order, you should consult a lawyer or the Registrar of the Court immediately.

"Form 27
"Warrant to arrest defendant for unpaid fine"

"

Section 88(2B), Summary Proceedings Act 1957

To every bailiff or constable

[*Full name*], of [*address*], [*occupation*], was ordered to pay the fine(s) specified in the Schedule to this warrant.

The fine remains (*or* fines remain) unpaid.

An order has been made that the defendant be brought before a Registrar (*or* District Court Judge *or* Community Magistrate) for the purpose of determining what action should be taken in respect of the enforcement of the unpaid fine(s).

I direct you to arrest the defendant and bring the defendant before the Registrar (*or* District Court Judge *or* Community Magistrate) as soon as possible unless the defendant pays the total amount stated below.

Amount unpaid: $

Enforcement fee: $

Total amount: $

Date:

.....

Registrar

Schedule

Unpaid fine(s)

CR No	Offence date	Offence details	Fine imposed
[*specify*]	[*specify*]	[*specify*]	[*specify*]

"Form 57
"Application to correct irregularities in proceedings for"

"

Section 78B, Summary Proceedings Act 1957

CR No:

To the Registrar (or District Court Judge)

I

[*Full name*]:

[*Full address*]:

[*Date of birth*]:

[*Telephone number(s)*]:

apply for correction of irregularities in the procedure leading up to an order made against me in respect of an infringement offence alleged to have been committed against [*specify the enactment and provision applicable*] on [*date*].

I make this application on the following grounds:

*1 I am not a person to whom the infringement notice was issued or on whom the notice is deemed to have been served.

*2 I did not in fact receive the reminder notice, or a copy of the notice of hearing, required to have been served on me under section 21 of the Summary Proceedings Act 1957.

*3 I believed on reasonable grounds that I had requested a hearing under section 21 of the Summary Proceedings Act 1957, but this request was not acted on by the informant.

*4 I reasonably believed that I had been advised by the informant that action would not be taken under section 21(3) of the Summary Proceedings Act 1957.

*5 I reasonably believed that I had been advised by the informant that further time for requesting a hearing would be allowed under section 21(6)(b) of the Summary Proceedings Act 1957, but action was taken under section 21(3) of that Act before that further time had expired.

*6 I—

(a) had, in writing, requested further relevant information from the informant in relation to the infringement offence; and

Form 57—*continued*

(b) had made the request within a time that would reasonably enable the informant to respond before the earliest time at which the informant would be entitled to take action under section 21(3) of the Summary Proceedings Act 1957; and

(c) believed on reasonable grounds that the informant had not refused to provide the requested information and that action would not be taken under section 21(3) of the Summary Proceedings Act 1957 before that information had been provided; and

(d) was not provided with the information before action was taken under section 21(3) of the Summary Proceedings Act 1957.

*7 Some other irregularity occurred in the procedures leading up to the order for the fine or costs, or both.

*Delete if inapplicable.

Statutory declaration in support of application

I [*full name*] of [*full address*], [*occupation*], solemnly and sincerely declare that:

1 [*specify particulars of irregularity in support of application*]

2 [specify particulars of the ground on which the application is made and sufficient information to inform the Court of the matters relied on in support of the application]

3 In the event that the Court orders service of a reminder notice on me—

*I will accept service by post at [*full address*].

*There is no suitable address at which I might accept service by post but I will accept personal service at [*full address*].

*Delete if inapplicable.

And I make this declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at [*place*]

this day of 20

before me:

(Registrar, Justice of the Peace, Solicitor, or other person authorised to take a statutory declaration)

Diane Morcom,

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 10 October 2006 (except *regulation 5*), amend the Summary Proceedings Regulations 1958 (the **principal regulations**).

Regulation 5 comes into force on 1 March 2007.

Regulation 4 inserts into regulation 2 of the principal regulations a definition of the term fine. The definition includes any amount that is required to be paid under a sentence of reparation or under any order of reparation as defined in section 145D of the Sentencing Act 2002.

Regulation 5 substitutes a *new regulation 15B* in the principal regulations which specifies the particulars of a reminder notice referred to in section 21(4) of the Summary Proceedings Act 1957 (the **Act**).

Regulation 6 amends regulation 15E of the principal regulations to remove the requirement that a person applying to correct irregularities in proceedings for an infringement offence must complete a separate statutory declaration.

Regulation 7 amends regulation 15K of the principal regulations to omit the amount of the fee specified as payable by a defendant for enforcement of a fine. This fee is now included in Schedule 2 of the principal regulations. The amount of the fee is unchanged.

Regulation 8 substitutes a *new regulation 15M* in the principal regulations. *New regulation 15M* provides for a receipt to be given for payment of a fine or other sum by the Registrar or other person receiving the payment.

Regulation 9 substitutes the following new forms 10, 26, 27, and 57 in Schedule 1 of the principal regulations:

- *new form 10* (reminder notice in respect of infringement offence) is a general form and no longer applies in respect of infringement offence notices issued under the Transport Act 1962, the Land Transport Act 1998, or the Resource Management Act 1991. The reminder notices to be used in respect of those infringement offence notices are separately prescribed under those Acts:
- *new form 26* (attachment order where fine remains unpaid) is redrafted to more clearly set out the obligations and liabilities of an employer and to include the option of paying deductions made from a defendant's wages or salary into a Ministry of Justice trust account:

- *new form 27* (warrant to arrest defendant for unpaid fine) removes reference to a conviction as most outstanding fines arise from infringement offences, and recognises that warrants can now be issued to bring defendants before a Registrar or a Community Magistrate, as well as a District Court Judge:
- *new form 57* (application to correct irregularities in proceedings for infringement offence) is consequential on new section 78B of the Act and the amendment to regulation 15E of the principal regulations. The new form sets out the various grounds on which an application can be made and includes a statutory declaration.

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