

Summary Proceedings Amendment Regulations (No 2) 2007

Preamble

At Wellington this 10th day of December 2007

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 (No 2) 2007.

2 Commencement

These regulations come into force on 1 March 2008.

3 Principal regulations amended

These regulations amend the Summary Proceedings Regulations 1958.

4 Registrar or bailiff may require defendant to supply statement of means

Regulation 15F is amended by omitting “in a form approved for the purpose by the chief executive of the Ministry of Justice”.

5 New regulation 15I substituted

Regulation 15I is revoked and the following regulation substituted:

“15I Criteria for determining whether to enter arrangement extending time to pay or for payment by instalments

A Registrar or bailiff, when deciding whether to enter into an arrangement under section 86 or 86A of the Act, and a Registrar when deciding whether to cancel an arrangement made under section 86A(1) of the Act, may have regard to—

- “(a) the salary or wages that the defendant is likely to receive:
- “(b) any other money available to the defendant:
- “(c) the defendant’s assets and liabilities:
- “(d) the money reasonably required to maintain the defendant and any dependants of the defendant:
- “(e) any provision reasonably required for contingencies:
- “(f) any other circumstances relating the defendant’s financial position that the Registrar or bailiff considers relevant.”

6 General form of applications

Regulation 15P(3) is revoked.

7 Schedule 1 amended

- (1) Schedule 1 is amended by revoking forms 24, 26, 28, 31A, 32, 32AA, and 32A and substituting the forms 24, 26, 28, 31A, 32, 32AA, and 32A set out in Part 1 of the Schedule of these regulations.
- (2) Schedule 1 is amended by inserting a new form 32B as set out in Part 2 of the Schedule of these regulations.

**Schedule
Schedule 1 amended**

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1

New forms substituted

“Form 24

“Warrant of commitment where order for
immediate payment of fine not complied with

“

1—continued
Form 24—continued*Section 83(2)(b), Summary Proceedings Act 1957*

Warrant Number:

PPN:

To every bailiff or constable

And to the manager of [*specify prison*]The defendant, [*defendant's full name*] of [*address*], [*occupation*], was convicted of [*specify*] by the [*place*] District Court on [*date*] and was ordered to pay the following amounts:

Reparation: \$

Fine: \$

Court costs: \$

Other costs: \$

On [*date*] the Court ordered the defendant to pay these amounts **immediately**.Because the defendant has failed to comply with that order, the Court has directed that a warrant of commitment be issued for the imprisonment of the defendant for a period of [*specify*].**You**, the bailiff or constable, are directed to arrest the defendant and deliver the defendant to the manager of [*specify prison*] unless the total amount stated below is paid before this warrant is executed.**And you**, the manager, are directed to receive the defendant and imprison the defendant for a period of [*specify*] or until notified by a Registrar that the total amount stated below has been paid.

Amount unpaid: \$

Enforcement fee: \$

Total: \$

Date:

.....
District Court Judge“Form 26
“Attachment order for unpaid fines

“

1—continued
Form 26—continued

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

PPN:

To [Full name of employer]

[Full address of employer]

The Court is satisfied that you are the employer of the defendant, [defendant's full name] of [defendant's current address].

The defendant has an unpaid fine (or unpaid fines).

Because of this, the Court has imposed this attachment order on the defendant's salary or wages. This means that, as their 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	Total
[specify]	[specify]	[specify]	[specify]

- 1 The specified weekly amount becomes due on each [specify day of the week]. You must deduct all specified weekly amounts that have become due since the date of the last deduction from each amount of salary or wages that becomes payable to the defendant.
- 2 You must make the first deduction from the next amount of salary or wages.
- 3 You must continue to make deductions until [specify the date the order expires] or until you are advised by the District Court that this attachment order has been varied, suspended, or cancelled.
- 4 This order replaces any existing attachment order for unpaid fines owed by the defendant.
- 5 All deductions must be paid by the 20th day of the following month to—
 - the Registrar of the Court; or
 - the Ministry of Justice trust account. [specify details].

1—continued
Form 26—continued

- 6 However, if the deduction of the specified weekly amount and any deductions of a kind described in note 4 below have the combined effect of reducing the defendant's net earnings below the protected earnings rate of \$[specify protected earnings rate] per week, you must reduce the amount of the deduction under this order to leave the defendant with the protected earnings rate or, if necessary, cancel the deduction.
- 7 You must notify this Court within 7 days if the defendant leaves or is dismissed from your employment.
- 8 Please notify the Court immediately if you have to reduce or cancel a deduction.

Date:

.....

Registrar

Notes to employers

- 1 In this attachment order—
 - (a) the term **salary or wages** includes—
 - (i) a retiring allowance, 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 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) the term **employer** includes, in relation to the payments of the kind referred to above, the person or body making the payments.

1—*continued*
Form 26—*continued*

- 2 While this order is in force, you must make deductions from all salary or wages due to the defendant, whether or not they are due under an employment contract entered into before or after this order was made.
- 3 This attachment order has priority over any deduction 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 Only the following have priority over this attachment order:
 - (a) attachment orders and deduction notices under the—
 - (i) Security Act 1964;
 - (ii) Family Proceedings Act 1980;
 - (iii) Child Support Act 1991;
 - (iv) Tax Administration Act 1994;
 - (b) any recovery of payments under section 86 of the Social Security Act 1964.
- 5 You cannot charge a fee for administering this order.
- 6 If you do not make the required deductions and pay them to the Court or the Ministry of Justice trust account—
 - (a) these amounts become a debt due by you to the Crown; and
 - (b) the Crown could take court action against you to recover this debt.
- 7 It is an offence under sections 106 and 106A of the Summary Proceedings Act 1957 to—
 - (a) fail to comply with this order without reasonable excuse;
 - (b) dismiss the defendant or alter the defendant's position in your business or undertaking to the defendant's prejudice by reason of—
 - (i) the defendant having been ordered to pay 1 or more fines;
 - (ii) your receiving this attachment order;
 - (iii) becoming aware that an attachment order is being made 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.

1—continued

“Form 28
“Warrant of commitment for unpaid fine

“

Section 88(3)(b), Summary Proceedings Act 1957

Warrant Number:

PPN:

To every bailiff or constable

And to the manager of [specify prison]

The defendant, [defendant’s full name] of [address], [occupation], was ordered to pay the fine(s) specified in the Schedule of this warrant.

*The amount remains unpaid.

*The amounts remain unpaid.

*Delete whichever is inapplicable.

Because of this, I have directed that a warrant of commitment be issued for the imprisonment of the defendant for a term of [specify].

*This sentence is to be served at the same time as (that is, concurrently with) the sentence of imprisonment imposed on the defendant at [place] District Court, on [date], CRN [specify].

*This sentence is to be served after (that is, cumulatively with) the sentence of imprisonment imposed on the defendant at [place] District Court, on [date], CRN [specify].

*Delete if inapplicable.

You, the bailiff or constable, are directed to arrest the defendant and to deliver the defendant to the manager of [specify prison] unless the total amount stated below is paid before this warrant is executed.

You, the prison manager, are directed to receive the defendant and imprison the defendant for a term of [specify] or until notified by a Registrar that the total amount stated below has been paid.

Amount unpaid: \$

Enforcement fee(s): \$

Total: \$

Date:

.....
District Court Judge

Schedule of unpaid fines

CRN	Offence date	Offence details	Fine imposed
[specify]	[specify]	[specify]	[specify]

1—*continued*

“Form 31A
“Order for return of defendant if conditions of
section 88(3) order not complied with

“

Section 88(9), Summary Proceedings Act 1957

District Court:
PPN:

To every bailiff or constable

The defendant, [*defendant's full name*] of [*address*], [*occupation*], was as a result of failing to pay his or her fine(s), ordered on [*date*] to comply with the following conditions:

[*specify conditions*]

If the defendant does not comply with 1 or more of these conditions, you are directed to arrest the defendant and bring the defendant before a District Court Judge or Community Magistrate to determine what further action should be taken to enforce the payment of the fine(s).

Date:

.....
District Court Judge *or*
Community Magistrate

Note

This order may not be executed until the defendant ceases to comply with any of the conditions of the order.

“Form 32
“Notice of property seized under warrant

“

1—*continued*
Form 32—*continued**Section 94(4), Summary Proceedings Act 1957*

District Court:

PPN:

To [*Defendant's full name*][*Defendant's address*]

You have not paid the fine(s) listed in the attached Schedule.

Because of this, a warrant to seize property has been executed against your property.

The seized property is listed below and/or in the attachment.

You must, within 7 days after the date on this notice,—

- notify the Registrar as to whether the seized property is yours; and
- supply the name and address of any other person who has an interest in any of the property (as owner or otherwise).

The seized property will be returned if, within 7 days after the date on this notice, you pay the total amount stated below **and** the costs of removing and storing the property. Payment must be made to this District Court.

The seized property may be sold without further notice if, after 7 days from the date of this notice,—

- the fine remains unpaid; and
- no claim in respect of the property has been made by a person other than yourself.

The money received from the sale of the property will be used to pay your fine(s) and the costs of seizing, storing, and selling the property.* Any remaining money will be paid to you unless a court orders otherwise.

If you do not understand this notice, you should consult a lawyer or a Registrar at the Court immediately.

Amount unpaid: \$

Enforcement fee(s): \$

Total (excluding expenses*): \$

*The Court will tell you these costs.

1—continued
Form 32—continued

List of property seized

[Describe each item seized, giving an identification number if possible.]

Date:

.....
Bailiff, [place] District Court or
Constable, [location]

Warning

If you interfere with, rescue, or attempt to rescue seized property, you could be arrested and prosecuted. You could be imprisoned for up to 3 months or fined up to \$2,000.

Schedule of unpaid fines

CRN	Offence date	Offence details	Fine imposed
[specify]	[specify]	[specify]	[specify]

“Form 32AA

“Warrant to arrest defendant to determine
defendant’s financial circumstances

“

1—*continued*
Form 32AA—*continued*

Section 106E(3), Summary Proceedings Act 1957

Warrant Number:
District Court:
PPN:

To every bailiff or constable

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

*The amount remains unpaid.

*These amounts remain unpaid.

*Delete whichever is inapplicable.

Because of this, a District Court Judge has, for the purpose of determining whether to impose a sentence of home detention or issue a warrant of commitment for the non-payment of the fine(s), directed that the defendant be brought before a District Court Judge in order to assess the defendant's financial ability to pay the total amount stated below.

Unless the total amount stated below is paid before this warrant is executed, you must arrest the defendant and bring the defendant before a District Court Judge as soon as possible.

Amount unpaid: \$

Enforcement fee(s): \$

Total: \$

Date:

.....
District Court Judge/Registrar

Schedule of unpaid fines

CRN	Offence date	Offence details	Fine imposed
[<i>specify</i>]	[<i>specify</i>]	[<i>specify</i>]	[<i>specify</i>]

“Form 32A
“Summons to hearing of claim for seized
property”

“

1—continued
Form 32A—continued

Section 96(3), Summary Proceedings Act 1957

PPN:

To [Full name of claimant or defendant] of [address].

This summons relates to property seized from you or from [defendant's full name] of [defendant's address] under a warrant to seize property executed on [date].

You are summoned to appear before a District Court Judge at the [place] District Court on [date] at [time] am/pm for the hearing of a claim*/your claim* in respect of—

- *• the seized property (see list of property claimed below):
- *• the value of the seized property:
- *• the proceeds from the sale of the seized property.*

*Delete if inapplicable.

Property claimed: [list below and/or in attached Schedule, including vehicle type and registration number where relevant].

Date:

.....
Registrar

Note

The purpose of this hearing is to enable a District Court Judge to determine matters arising from the claim to the seized property, for example,—

- the ownership of the seized property:
- whether the seized property should be sold (if not already sold):
- liability for towing and storage costs incurred:
- the distribution of proceeds from the sale of the seized property.

2

New form 32B inserted
“Form 32B

“Claim to seized property by person other than
defendant”

“

2—continued
Form 32B—continued

Sections 96 and 97, Summary Proceedings Act 1957

PPN:

To the Registrar

District Court [*specify*]

This claim relates to property seized under a warrant to seize property executed against [*defendant's full name*] of [*defendant's address*] on [*date of seizure*].

I, [*name of claimant*] of [*address, occupation*], claim the following interest in respect of—

- *• the seized property:
- *• the value of the seized property:
- *• the proceeds of the sale of the seized property.

*Delete if inapplicable.

[*Describe property including nature (and, if relevant, amount) of interest claimed.*]

The grounds of my claim are: [*state grounds here and continue on a separate page if necessary*].

Date:

.....

Claimant

Warning

To prevent the sale of the seized property, the claimant must deposit with the Court the amount specified by a Registrar as the estimated value of that property, or provide other satisfactory security.

If not, the seized property may be sold as if no claim had been made.

However, the money from the sale will be held until a District Court Judge has considered all claims to the seized property and has decided how the money is to be distributed.

If the claim is for an interest in the property as an owner under a hire purchase agreement or under a bill of sale or otherwise as security for a debt, a District Court Judge may in any case order the sale of the property, and may direct that the proceeds be applied as the Judge sees fit.

Rebecca Kitteridge,
for 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 1 March 2008, amend the Summary Proceedings Regulations 1958.

These regulations—

- remove the requirement that the defendant's statement of means be in a form approved by the chief executive of the Ministry of Justice:
- provide revised criteria relating to the making or cancelling of arrangements allowing the defendant a greater time to pay a fine or to pay the fine by instalments:
- revoke forms 24, 26, 28, 31A, 32, 32AA, and 32A and substitute new forms 24, 26, 28, 31A, 32, 32AA, and 32A:
- insert new form 32B, which relates to a claim to seized property by a person other than a defendant:
- consequentially revoke regulation 15P(3) as a result of new form 32B.

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