



Summary Proceedings Amendment Regulations 2009

Anand Satyanand, Governor-General

Order in Council

At Wellington this 11th day of May 2009

Present:

His Excellency the Governor-General in Council

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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Regulations

- 1 Title**
 These regulations are the Summary Proceedings Amendment Regulations 2009.
- 2 Commencement**
 These regulations come into force on 29 June 2009.
- 3 Principal regulations amended**
 These regulations amend the Summary Proceedings Regulations 1958.
- 4 Interpretation**
 - (1) The definition of **Court of hearing** in regulation 2 is amended by omitting “Part 2 or Part 5” and substituting “Part 2, 5, or 5A”.
 - (2) Regulation 2 is amended by inserting the following definition in its appropriate alphabetical order:
 “**deposition** includes oral evidence taken under section 182 of the Act, unless the context otherwise requires”.

- (3) The definition of **examining Court** in regulation 2 is amended by omitting “174” and substituting “182”.
- (4) The definition of **examining Registrar** in regulation 2 is amended by omitting “174” and substituting “182”.
- (5) The definition of **hearing** in regulation 2 is revoked.
- (6) The definition of **information** in regulation 2 is amended by omitting “14” and substituting “14B”.

5 New regulation 5 inserted

The following regulation is inserted after regulation 4:

“5 Application of regulations 6 to 14B

- “(1) Regulations 6 to 14 apply to the taking of evidence under section 31 or 32 of the Act.
- “(2) Regulation 14 applies to the taking of evidence under section 31, 32, or 182 of the Act.
- “(3) Regulations 14A and 14B apply to the taking of evidence under section 182 of the Act.”

6 Application for taking evidence

Regulation 6(1) is amended by omitting “or section 174”.

7 Signature and disposal of depositions

Regulation 13(2) is amended by omitting “Forms 54 and 55” and substituting “Form 54”.

8 New regulation 14 substituted

Regulation 14 is revoked and the following regulation substituted:

“14 Non-appearance of person on whose behalf examination held

- “(1) This regulation applies to a person on whose behalf an examination is being held under section 31, 32, or 182 of the Act who—
 - “(a) fails to appear at the appointed time or at any adjournment; or
 - “(b) fails to proceed with the examination.

“(2) The examining Court must immediately send a certificate in form 56 of Schedule 1 to the Court of hearing.”

9 New regulations 14A and 14B inserted

The following regulations are inserted after regulation 14:

“14A Procedural requirements if oral evidence to be taken other than at committal hearing

- “(1) This regulation applies if an oral evidence order is made under section 180 of the Act that, in accordance with section 182 of the Act, permits or requires oral evidence to be taken other than at a committal hearing.
- “(2) The Registrar of the Court of hearing must send the order and a certified copy of the relevant information to the Registrar of the examining Court.
- “(3) On receiving the order, the Registrar of the examining Court must—
- “(a) appoint a time and place for the examination; and
 - “(b) give notice of the time and place, in form 53 of Schedule 1, to the prosecutor and the defendant.
- “(4) The notice must be served in the same manner as if it were a summons to a defendant on an information, provided that—
- “(a) the notice may be served on the prosecutor or the defendant by leaving it at or posting it to his or her address for service as stated in the order:
 - “(b) if the prosecutor is an officer of any department of State, local authority, or public body, the notice may be served on the prosecutor by leaving it at or posting it to the office of the department, local authority, or public body, as the case may be, in or nearest to the place where the Court of hearing or the examining Court is situated:
 - “(c) if the defendant is represented in the proceedings by a solicitor, the notice may be left with or posted to that solicitor.

“14B Conduct of examination if oral evidence taken other than at committal hearing

- “(1) This regulation applies if oral evidence is taken, in accordance with section 182 of the Act, other than at a committal hearing.

- “(2) The examination may take place in the court, in an office of the court, or in any other place appointed by the examining Court.
- “(3) The parties may attend the examination with or without counsel or solicitor.
- “(4) The examining Court may—
- “(a) put down or cause to be put down any particular question or answer if there appears to be a special reason for doing so; and
 - “(b) question the witness about the meaning of any answer or about any matter arising in the course of the examination.
- “(5) If any evidence given before an examining Registrar is objected to,—
- “(a) the examining Registrar must—
 - “(i) take down the question and answer or admit the document, as the case may be; and
 - “(ii) make a note of the objection on the deposition; and
 - “(b) the question of admissibility must be decided by the court at the hearing of the information.
- “(6) If the witness objects to any question put to him or her before an examining Registrar, the question and the objection must be taken down in the deposition and the validity of the objection must be decided by the court at the hearing of the information.
- “(7) Subclause (8) applies if the examination is before a Registrar and—
- “(a) a witness refuses or neglects to attend in answer to a witness summons issued under these regulations; or
 - “(b) a witness, having attended, refuses to be sworn or to answer any lawful question or to produce any document that he or she is lawfully required to produce.
- “(8) The examination must be adjourned and the adjourned examination must be held before a District Court at a time and place to be appointed by the examining Registrar.
- “(9) Depositions sent to the Registrar of the Court of hearing must be accompanied by—
- “(a) a record of oral evidence in form 54 of Schedule 1; and
 - “(b) any exhibits, suitably marked.”

- 10 Order for detention in psychiatric hospital pending trial**
Regulation 15A is amended by omitting “the proviso to section 171(3)” and substituting “section 184T(3)”.
- 11 Forms amended**
The forms in Schedule 1 of the principal regulations are amended in the manner indicated in Schedule 1 of these regulations.
- 12 New forms substituted**
Schedule 1 of the principal regulations is amended by—
- (a) inserting the form 6A set out in Schedule 2 of these regulations after form 6; and
 - (b) revoking forms 40 to 47 and substituting the forms 40 to 47 set out in Schedule 3 of these regulations; and
 - (c) revoking forms 54 and 55 and substituting the form 54 set out in Schedule 4 of these regulations.
-

Schedule 1
Schedule of forms amended

r 11

Form 3

Omit “147(1)” and substitute “150”.

Form 10A

Add:

“Notice of alibi

“If you intend to give evidence of an alibi (by showing that you were not at the place where the offence was committed at the time it was committed), you must give notice to the prosecutor within 14 days after you plead not guilty to a summary offence.”

Form 39

Omit “Section 147” and substitute “Section 150”.

Form 51

Omit “Sections 31, 32, and 174” and substitute “Sections 31 and 32”.

Form 52

Omit “Sections 31, 32, and 174” and substitute “Sections 31 and 32”.

Form 53

Omit “174” and substitute “182”.

Form 56

Omit “174” and substitute “182”.

Schedule 2

r 12(a)

New form 6A inserted

Form 6A

Summons to non-party to appear and produce
information*Section 20(1), (1A), and (2), Summary Proceedings Act 1957***To** *[full name, address]*

You are summoned at the request of the prosecutor/defendant* to appear and produce the information set out below at the District Court at *[place, date, time]* and on such other days as may be directed by the Court in respect of—

- †(a) a charge of *[particulars of charge]* laid by *[name of informant]* against *[full name of defendant]*.
- †(b) a complaint made by *[name of complainant]* against *[full name of defendant]* that *[particulars of complaint]*.

*Select one.

†Select the paragraph that applies.

The information you are required to bring with you and produce is *[specify information to be produced]*.

Date:

Place:

Signature:

(District Court Judge/Justice of the Peace/Community Magistrate/Registrar*)

*Select one.

Schedule 3

r 12(b)

New forms 40 to 47 substituted

Form 40

Warrant to arrest defendant who does not attend
committal proceedings following summons*Section 151, Summary Proceedings Act 1957***To** every constable/[*full name*], constable*

*Select one.

On [*date*] an information was laid that [*full name, address, occupation*], the defendant, at [*place, date*], [*set out the alleged offence*].The defendant, having been served with a summons issued against him/her* under section 150 of the Summary Proceedings Act 1957, did not attend personally today at [*time*] at this Court, being the time and place mentioned in the summons/being the time and place to which the committal proceedings were adjourned*.

*Select one.

I/We* direct you to arrest the defendant and bring him/her* before a District Court as soon as possible.

*Select one.

Date:

Place:

Signature(s):

(District Court Judge/Justices of the Peace/Community Magistrate(s)*)

*Select one.

Form 41
Depositions of witnesses for purposes of
committal

Sections 162 and 184D, Summary Proceedings Act 1957

In the matter of [*full name*] (defendant), who is charged with the offence(s) set out in the attached information(s)

On [*date*] before the District Court at [*place*],—

- †(a) the formal written statement(s) of [*full name(s) of witness(es)*] was/were* received in compliance with section 162 of the Summary Proceedings Act 1957; and
- †(b) the oral evidence of [*full name(s) of witness(es)*] was recorded in writing in compliance with section 184D of the Summary Proceedings Act 1957.

*Select one.

†Select the paragraph(s) that apply.

Date:

Place:

Signature(s):

(District Court Judge/Justices of the Peace/Community Magistrate(s)/Registrar*)

*Select one.

Form 42

Committal of defendant for trial or sentence

*Sections 160, 177, and 184G, Summary Proceedings Act
1957*

- 1 On [date], [full name, address, occupation], the defendant, appeared before the District Court at [place] charged with the offence(s) set out in the attached information(s) numbered 1 to [last information number].
- 2 *For this paragraph select the statement that applies.*
- Statement A (plea of guilty)*
The defendant pleaded guilty under section 160 of the Summary Proceedings Act 1957 to the offence(s) set out in the information(s) numbered [information number(s)].
- Statement B (standard committal)*
The attached written statements numbered 1 to [last statement number] were admitted in evidence under section 162 of the Summary Proceedings Act 1957. Under section 177(2) of the Summary Proceedings Act 1957, the Court did not consider the evidence.
- Statement C (committal hearing)*
For this statement select from paragraphs (a), (b), and (c) the paragraph(s) that apply.
- (a) The attached written statements numbered 1 to [last statement number] were admitted in evidence under section 162 of the Summary Proceedings Act 1957 after—
- (i) the charge(s) were read to the defendant; and
 - (ii) the [number] witnesses whose names are set out in their respective records of evidence gave, on oath in my/our* presence and in the presence of the defendant, the evidence set out in the attached record of evidence (the pages of which are numbered 1 to [last page number]); and
 - (iii) the defendant/the defendant's counsel, [name],* was given full opportunity to cross-examine each witness, and any cross-examination is included in the record of evidence; and
 - (iv) the evidence of each witness was read over to the witness in the presence of the defendant and

Form 42—*continued*

each page was then signed by the witness and by me/us*.

*Select one.

- (b) The information(s) numbered [*information number(s)*] having been amended, the amended charge was/charges were* read to the defendant immediately after all the evidence for the informant had been given.

*Select one.

- (c) The statements contained in section 184I(a) and (b) of the Summary Proceedings Act 1957 were then addressed to the defendant, who answered as follows: [*defendant's answer*].

- 3 *For this paragraph select the statement(s) that apply.*

Statement A

The defendant was then committed to the High Court/District Court* at [*place*] for sentence on the charge(s) set out in the attached information(s) numbered [*information number(s)*].

*Select one.

Statement B

The defendant was then committed to the High Court/District Court* at [*place*] for trial on the charge(s) set out in the attached information(s) numbered [*information number(s)*].

*Select one.

- 4 *Include this paragraph if the defendant is committed for trial for any offence other than one referred to in section 361B(5) of the Crimes Act 1961.*

Written notice was given to the defendant's counsel or solicitor, or to the defendant if he or she is not represented, of the defendant's right under section 361B of the Crimes Act 1961 to apply for trial before a Judge without a jury.

Date:

Place:

Form 42—*continued*

Signature(s):

(District Court Judge/Justices of the Peace/Community Magistrate(s)/Registrar*)

*Select one.

Form 42A
Notice of right to be tried by Judge without jury
*Section 184S, Summary Proceedings Act 1957 and section
361B, Crimes Act 1961*

(Front page)

Case number:

To [*full name, address, occupation*] (defendant)

If you wish to be tried before a Judge of the High Court/District Court* without a jury, then under section 361B of the Crimes Act 1961 you may, within 28 days, give written notice to the Registrar of the High Court/District Court* at [*place*] to which you are committed.

*Select one.

Notes

- 1 If you do not give notice within 28 days after you are committed for trial and you wish to be tried before a Judge without a jury, you may still apply for such a trial at any time before the charges are put to a jury at the beginning of a jury trial.
- 2 The Judge will only grant your application for such a trial if—
 - (a) you were not given notice of your right to be tried before a Judge without a jury; or
 - (b) there were good reasons why you did not exercise your right at the proper time; or
 - (c) it is in the interests of justice.
- 3 If you are in doubt about your obligations or rights, consult your solicitor or the Registrar immediately.

Form 42A—*continued*

(Back page)

Statement of service

This notice was served by delivering a copy of it to the defendant personally at the address shown above/[*address if different from that shown above*]* on [*date*].

*Select one.

Date:

Signature:

(officer of the court)

Statement of receipt

I acknowledge receipt of a copy of this notice.

Date:

Signature:

(defendant)

Form 43
Warrant of commitment of defendant committed
for trial or for sentence

*Section 184T(2), Summary Proceedings Act 1957 and
sections 28, 29, and 30(3), Bail Act 2000*

(Front page)

To every constable/[*full name*], constable*
and

To the Manager of the prison at [*place*]

*Select one.

[*Full name, address*], the defendant, was today committed to the High Court/District Court* at [*place*] for trial/sentence* under section 177/section 184G* of the Summary Proceedings Act 1957 in relation to a charge/charges* of [*substance of charge(s)*].

I/We* direct you, the constable(s), to deliver the defendant to the prison at [*place*] and you, the Manager, to receive the defendant into your custody and detain him/her*—

†(a) pending his/her* trial.

†(b) pending him/her* being brought up for sentence.

*Select one.

†Select the paragraph that applies.

Date:

Place:

Signature(s):

(District Court Judge/Justices of the Peace/Community Magistrate(s)*)

*Select one.

Form 43—*continued*

(Back page)

Certificate of grant of bail

I/We* certify that I/we* have granted bail to [*full name*], the defendant, subject to the following conditions:

*Select one.

Date:

Place:

Signature(s):

(District Court Judge/Justices of the Peace/Community Magistrate(s)/Registrar*)

*Select one.

Memorandum for Manager

[*Full name*], the defendant, is to stand his/her* trial at the High Court/District Court* at [*place*] and is required to next attend that court on [*date, time*].

*Select one.

Date:

Signature:

(Registrar, [*place*] District Court)

Form 43A
Order for defendant's detention in psychiatric
hospital pending trial
Section 184T(3), Summary Proceedings Act 1957

(Front page)

To every constable/[*full name*], constable*
and

To the Superintendent of the [*name*] hospital

*Select one.

[*Full name, address*], the defendant, was today committed to the High Court/District Court* at [*place*] for trial under section 177/section 184G* of the Summary Proceedings Act 1957 in relation to a charge(s) of [*substance of charges*].

I am/We are* satisfied, on the production of a certificate or certificates by 2 medical practitioners, that—

- (a) the defendant is mentally disordered within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992; and
- (b) the defendant's mental condition requires that, in the defendant's own interest, the defendant should be detained in a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, instead of in a prison.

I/We* have accordingly made an order for the defendant's detention in a psychiatric hospital pending his/her* trial.

I/We* direct you, the constable(s), to deliver the defendant to the [*name*] hospital, and you, the Superintendent, to receive the defendant into your custody and to detain him/her* pending his/her* trial.

*Select one.

Date:

Place:

Signature(s):

Form 43A—*continued*

(District Court Judge/Justices of the Peace/Community Magistrate(s)*)

*Select one.

(Back page)

Memorandum for Superintendent

[*Full name*] is to stand his/her* trial at the High Court/District Court* at [*place*] and is required to next attend that court on [*date, time*].

*Select one.

Date:

Signature:

(Registrar, [*place*] District Court)

Form 44

Notice to other party of intention to take oral
evidence of witness after defendant's committal
for trial

Section 184U(5)(b), Summary Proceedings Act 1957

In the matter of the prosecution of [*defendant's name*] for [*nature of charge(s)*]

To [*full name, address, occupation*]

This document notifies you that an order has been made by a District Court Judge, on my application, that the oral evidence of [*full name, address, occupation*] is to be taken at [*place, date, time*].

*You are required to attend, and you or your counsel or solicitor may cross-examine the witness.

*Include this paragraph if this notice given by defendant.

Date:

Place:

Signature:

(party giving notice)

Form 45
Notice to witness to attend court
Section 184V(3), Summary Proceedings Act 1957

CR number:

To *[full name, address, occupation]* (witness)

This document notifies you that—

- 1 In the event of *[full name of defendant]*, the defendant, being committed for trial on a charge/charges* of *[charge(s)]*, you will be required, as a witness, to attend the High Court/District Court* at *[place]* at the time and on the day or days that are notified to you in writing by a constable.
*Select one.
- 2 Once the case has begun, you are required to attend from day to day until the hearing of the case is completed or you are released earlier by the court.
- 3 If you change your address in the meantime, you must notify the Police or the Registrar of the High Court/District Court* of your new address.
*Select one.
- 4 If the defendant is discharged at the conclusion of the committal hearing, this notice will be cancelled and a notice of cancellation will be given to you either by personal delivery or by registered letter addressed to your last-known place of residence.

Date:

Place:

Signature(s):

(District Court Judge/Justices of the Peace/Community Magistrate(s)/Registrar*)

*Select one.

Form 45—*continued*

Note

This notice has the same effect as if it were a summons to a witness issued out of the High Court or District Court, as the case may be. A person who disobeys a witness summons is punishable for contempt of court.

Form 45A
Notice to witness of cancellation of notice to
attend court

Section 184V(6), Summary Proceedings Act 1957

CR number:

To [*full name, address, occupation*] (witness)

This document notifies you that—

1 At the conclusion of the committal hearing of a charge/charges* of [*charge(s)*], [*full name of defendant*], the defendant, was discharged.

*Select one.

2 The notice requiring you to attend the High Court/District Court* at [*place*] is cancelled.

*Select one.

3 You are no longer required to attend the High Court/District Court* at [*place*] to give evidence on the charge(s) set out above.

*Select one.

Date:

Place:

Signature:

(Registrar)

Form 46
Warrant for arrest of witness about to leave New
Zealand

Section 185(1), Summary Proceedings Act 1957

To every constable/[*full name*], constable*

*Select one.

[*Full name, address, occupation*], the witness, has been summoned to give evidence in the case of [*full name of defendant*], the defendant, or has been served with a notice to attend the High Court/District Court*.

*Select one.

The defendant was committed to the sittings of the High Court/District Court* at [*place*] starting on [*date*] for trial on a charge/charges* of [*charge(s)*].

*Select one.

I am satisfied on oath that the witness is about to leave New Zealand. I direct you to arrest the witness and bring him/her* before a District Court Judge as soon as possible.

*Select one.

Date:

Place:

Signature:

(District Court Judge/Justice of the Peace/Community Magistrate*)

*Select one.

Form 47
Warrant of commitment of witness about to
leave New Zealand

Sections 20(4A) and 185(3), Summary Proceedings Act 1957

To every constable/[*full name*], constable*

and

To the Manager of the prison at [*place*]

*Select one.

[*Full name, address, occupation*], the witness, was served with a notice to attend the High Court/District Court* or was summoned to give evidence at the trial of [*full name of defendant*] who was committed to the sittings of the High Court/District Court* at [*place*] starting on [*date*] for trial on a charge/charges* of [*charge(s)*].

*Select one.

I am satisfied that the witness is about to leave New Zealand and that the ends of justice would therefore be defeated.

I direct you, the constable(s), to deliver the witness to the prison at [*place*] and you, the Manager, to receive the witness into your custody and to detain him/her* until the trial of [*full name of defendant*] unless he/she* enters into a bond in the sum of \$[*amount*] with sureties in the sum of \$[*amount*] each to secure his/her* attendance at the trial.

*Select one.

Date:

Place:

Signature:

(District Court Judge)

Schedule 4
New form 54 substituted

r 12(c)

Form 54

Record of oral evidence of witnesses examined
other than at hearing

Sections 31, 32, and 182, Summary Proceedings Act 1957

In the matter of [*full name*] (informant/complainant*), represented
by [*name of counsel*]

And

[*Full name*] (defendant), represented by [*name of counsel*], who is
charged with the offence(s) set out in the attached information(s)

*Select one.

The oral evidence of [*full name of witness(es)*]—

- (a) was taken on [*date*] before the examining Court, being the
District Court at [*place*] presided over by [*full name(s)*]
District Court Judge/Justices of the Peace/Community Magis-
trate(s)/Registrar*; and
- (b) is written on [*number*] separate sheets of paper numbered con-
secutively 1 to [*last number*]; and
- (c) was taken in accordance with the Summary Proceedings Regu-
lations 1958 and the Summary Proceedings Act 1957.

*Select one.

Date:

Place:

Signature(s):

(Examining District Court Judge/Justices of the Peace/Community
Magistrate(s)/Registrar*)

*Select one.

Note

Each deposition must—

- (a) start with the words “This deponent on his/her oath says”; and
- (b) be typewritten on separate sheets; and

Form 54—*continued*

- (c) be signed on each page by the witness and by the Examining District Court Judge, Justices of the Peace, Community Magistrate(s), or Registrar; and
- (d) be attached securely to this form.

Michael Webster,
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 29 June 2009, amend the Summary Proceedings Regulations 1958.

The amendments update a number of regulations and forms in the Summary Proceedings Regulations 1958 to take into account changes made to the Summary Proceedings Act 1957 (the **principal Act**) by the Summary Proceedings Amendment Act (No 2) 2008 (the **amendment Act**).

Section 12 of the amendment Act inserts new Parts 5 and 5A into the principal Act, which change the procedural regime for dealing with indictable offences. Under the new regime, the standard committal for trial will be a purely administrative process based on the written statements filed by the prosecution. A witness or witnesses can be examined at a hearing only if the court has made an oral evidence order in respect of that person, which the court may make on the application of either party.

Section 12 of the amendment Act will come into force on 29 June 2009.

The amendment regulations also update some forms to allow them to be used in respect of committals to both the District Court and the High Court.

**Summary Proceedings Amendment
Regulations 2009**

2009/131

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 14 May 2009.

These regulations are administered by the Ministry of Justice.
