

Summary Proceedings Amendment Regulations (No 4) 1998

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

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1 Title and commencement

- (1) These regulations may be cited as the Summary Proceedings Amendment Regulations (No 4) 1998, and are part of the Summary Proceedings Regulations 1958¹ (“the principal regulations”).
- (2) These regulations come into force on 1 November 1998.

¹ SR 1958/38 (Reprinted with Amendments Nos 1 to 9: SR 1980/84)

Amendment No 10: *(Revoked by SR 1987/311)*

Amendment No 11: *(Revoked by SR 1987/311)*

Amendment No 12: *(Revoked by SR 1987/311)*

Amendment No 13: SR 1985/231

Amendment No 14: *(Revoked by SR 1988/37)*

Amendment No 15: SR 1987/211

Amendment No 16: SR 1987/311

Amendment No 17: *(Revoked by SR 1991/189)*

Amendment No 18: SR 1989/12

Amendment No 19: *(Revoked by SR 1997/322)*

Amendment No 20: SR 1992/70

Amendment No 20: *(Revoked by SR 1997/322)*

Amendment No 21: SR 1993/81

Amendment No 22: SR 1993/150

Amendment No 23: SR 1993/252

Amendment No 24: SR 1993/314

Amendment No 25: SR 1996/26

Amendment No 26: SR 1996/154

Amendment No 27: SR 1997/322

Amendment 1998: SR 1998/64

Amendment (No 2) 1998: SR 1998/133

Amendment (No 3) 1998: SR 1998/223

2 Summons to witnesses

Regulation 11 of the principal regulations is amended by inserting, after the words “District Court Judge or”, the words “Community Magistrate or”.

3 Signature and disposal of depositions

Regulation 13(1) of the principal regulations is amended by inserting, after the words “District Court Judge,” in both places where they occur, the words “Community Magistrates,”.

4 Reminder notices for infringement offences

Regulation 15B of the principal regulations is amended by revoking paragraph (e), and substituting the following paragraph:

“(e) The infringement fee, or the amount of the infringement fee remaining unpaid, and other amounts specified as penalties payable in respect of the alleged offence.”.

5 Costs payable by defendant in respect of infringement offence

[Revoked]

Regulation 5 was revoked, as from 23 October 1998, by regulation 2 Summary Proceedings Amendment Regulations (No 5) 1998 (SR 1998/329).

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

The principal regulations are amended by revoking regulation 15F, and substituting the following regulation:

“15F

A Registrar or bailiff may, before entering into an arrangement with a defendant under section 86 or section 86A of the Act, require the defendant to complete and supply to the Registrar or bailiff a statement of means in a form approved for the purpose by the chief executive of the Department for Courts.”

7 Arrangement on behalf of defendant of extension of time to pay

The principal regulations are amended by revoking regulation 15G, and substituting the following regulation:

“15G

- (1) A person may, with the consent of the Registrar or a bailiff, enter into an arrangement under section 86 or section 86A of the Act on behalf of a defendant who is—
 - “(a) Under the age of 16 years; or
 - “(b) Absent from New Zealand; or
 - “(c) Incapable of acting personally because of mental or physical illness or disability.
- “(2) The Registrar or bailiff must not consent to the arrangement unless the person—
 - “(a) Satisfies the Registrar or bailiff that the person has a proper interest in, and knowledge of, the defendant’s affairs; and
 - “(b) Gives the Registrar or bailiff a written statement of the following information:
 - “(i) The person’s name and address;
 - “(ii) The person’s relationship with the defendant;
 - “(iii) The reason the defendant is not entering into the arrangement personally;
 - “(iv) If the defendant is absent from New Zealand, the date when the defendant is expected to return to New Zealand; and
 - “(c) If required by the Registrar or bailiff to do so, completes and supplies to the Registrar or bailiff a written statement of the defendant’s means.”

8 Examination of applicant for extension of time

Regulation 15H of the principal regulations is revoked.

9 Criteria for determining whether to enter arrangement for extension of time

The principal regulations are amended by revoking regulation 15I, and substituting the following regulation:

“15I

- (1) A Registrar or bailiff must not enter into an arrangement under section 86 or section 86A of the Act, and a Registrar must, under section 86A(3) of the Act, cancel an arrangement entered into by a bailiff, unless satisfied that it is reasonable for the arrangement to be entered into, having 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 manner in which the defendant’s liabilities have arisen:
 - “(e) Any recent disposition of property by the defendant:
 - “(f) The money reasonably required to maintain the defendant and any dependents of the defendant:
 - “(g) Any provision reasonably required for contingencies:
 - “(h) Any other circumstances that the Registrar or bailiff considers relevant.
- “(2) In fixing any greater time for payment, or the amounts of any instalments, the Registrar or bailiff must have regard to the matters specified in subclause (1), and to the need to secure payment within a reasonable time without inflicting unnecessary hardship on the defendant or any dependents of the defendant.”

10 Notice of decision on application for extension of time

Regulation 15J of the principal regulations is revoked.

11 Fee and expenses in respect of enforcement of fine

- (1) Regulation 15K(1) of the principal regulations is amended by omitting the words “or any sentence is imposed pursuant to”, and substituting the words “any sentence or deduction notice is imposed or issued under”.
- (2) Regulation 15K(2) of the principal regulations is amended by inserting, after the words “District Court Judge,”, the words “Community Magistrate,”.

- (3) Regulation 15K(3) of the principal regulations is amended by inserting, after the word “Judge” in both places where it occurs, the words “or Community Magistrate”.

12 General form of applications

- (1) Regulation 15P(1) of the principal regulations is amended by inserting, after the words “District Court Judge”, the words “Community Magistrate,”.
- (2) Regulation 15P(2) of the principal regulations is amended by inserting, after the words “District Court Judge”, the words “or Community Magistrate”.

13 Forms amended

Schedule 1 of the principal regulations is amended—

- (a) By inserting, after the words “Justice of the Peace” in each place where they occur in forms 3, 4, 6, 9B, 16, 37, 39, 46, 48, 49, and 50, the words “*or* Community Magistrate”:
- (b) By inserting, after the words “Justice(s)” or “Justice(s) of the Peace”, in each place where those words occur in forms 8, 9, 11, 21, 21A, 35, 54, 55, and 56, the words “*or* Community Magistrate(s)”:
- (c) By inserting, after the words “Justices of the Peace” in each place where they occur in forms 40, 41, 42, 43, 43A, and 45, the words “*or* Community Magistrates”:
- (d) By omitting from form 27 the words “TO: Every Constable”, and substituting the words “TO: Every Bailiff or Constable”.

14 New forms 10 and 26 substituted

- (1) Schedule 1 of the principal regulations is amended by revoking forms 10 and 26, and substituting, respectively, the forms 10 and 26 set out in the Schedule of these regulations.
- (2) The Summary Proceedings Regulations 1958, Amendment No 24 are consequentially amended by revoking regulation 3 and the Schedule.

15 Forms 58 and 59 revoked

Schedule 1 of the principal regulations is amended by revoking forms 58 and 59.

**Schedule
New forms prescribed**

Reg 14(1)

Form 10

Notice No.

REMINDER NOTICE IN RESPECT OF INFRINGEMENT OFFENCE
Section 21(2) and (3c) (b), Summary Proceedings Act 1957

INFORMANT

--

CR No:

TO DEFENDANT

Name:	Date of Birth:
Address:	Sex:
.....	Occupation:
.....	Driver's Licence No:

THE INFORMANT SHOWN ABOVE ALLEGES THAT YOU COMMITTED AN INFRINGEMENT OFFENCE
ON [Date] AT [Place] AT [Time] IN THAT YOU

[Here set out details of offence, including the registration number of any vehicle used in the offence]

THIS IS AN OFFENCE AGAINST

[Here set out enactment and provision applicable]

BEING:

THE PENALTY FOR THE OFFENCE IS:
Infringement fee (excluding towage fee):
\$

Amount of infringement fee unpaid:
\$

Towage fee: \$

Other (specify): \$

Total payable: \$

OTHER PENALTIES:

- 1 An overloading infringement offence
- 2 A stationary vehicle infringement offence
- 3 A moving vehicle infringement offence
- 4 Another offence specified in Second Schedule of Transport Act 1962
- 5 An infringement offence against some other Act

[Mark box beside relevant offence]

INFRINGEMENT NOTICE ISSUED BY
[Name or number, if any, of officer who issued notice]

THE LAST DAY FOR PAYMENT IS 28 DAYS AFTER SERVICE OF THIS NOTICE.

CHEQUES, MONEY ORDERS, ETC, SHOULD BE MADE OUT TO THE INFORMANT AND CROSSED "NOT NEGOTIABLE". PAYMENT MUST BE MADE TO THE INFORMANT AT THE ADDRESS SHOWN ABOVE.

IF YOU WISH TO DENY THE OFFENCE OR WISH TO HAVE A COURT CONSIDER SUBMISSIONS IN RESPECT OF THE OFFENCE, FOLLOW THE DIRECTIONS CONTAINED IN PARAGRAPHS 2 TO 4

SERVICE DETAILS
[To be completed only on copy to be filed in Court]

INFRINGEMENT NOTICE
Served by [Method of service*] on [Date of service]

REMINDER NOTICE
Served by [Method of service*] on [Date of service]

* Attaching to vehicle [Infringement notice only]

Personal Service
Registered post or ordinary post

COURT RECORD

IN YOUR OWN INTERESTS YOU SHOULD READ THE NOTES PRINTED OVERLEAF.

Form 10—*continued*

NOTES TO DEFENDANT

INFORMATION ABOUT ALL INFRINGEMENT OFFENCES

NOTE: If, after reading these notes, you do not understand anything in the notes, you should consult a lawyer immediately.

NOTE: Infringement offence notices may be issued in respect of—

1. Overloading offences:
2. Stationary vehicle offences:
3. Moving vehicle offences:
4. Offences specified in Schedule 2 to the Transport Act 1962 other than those referred to in notes 1 to 3 above:
5. Offences in respect of which a person may be issued with an infringement notice under the Litter Act 1979, the Weights and Measures Act 1987, or any other Act (other than the Transport Act 1962) allowing the use of the infringement notice procedure under section 21 of the Summary Proceedings Act 1957.

The type of infringement offence that *you* are alleged to have committed appears on the front of this form.

Paragraphs 1 to 6 below and paragraph 8 apply to *all* types of infringement offence.

Paragraph 7 relates only to *stationary* AND *moving* vehicle offences.

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 an 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.

Form 10—*continued*

NOTES TO DEFENDANT

Payment

1. If you pay the infringement fee or the amount of the infringement fee remaining unpaid within 28 days after the service of this notice, 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.

NOTE: If the offence alleged against you is a SPEEDING OFFENCE (other than an offence detected by an approved speed camera), demerit points will be recorded against you upon payment of the infringement fee (or upon conviction of the speeding offence). The number of demerit points that will be imposed is shown on the front of the infringement notice issued in respect of the alleged infringement offence.

Further Action

2. If you wish to raise any matter relating to the circumstances of the alleged offence, you should do so by writing to the informant at the address shown on the front page of this notice within 28 days after the service of this notice.

3. If you wish to deny liability in respect of the alleged offence, you must, within 28 days after the service of this notice, 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, if it decides to commence court proceedings in respect of the offence, serve you 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*

NOTES TO DEFENDANT

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 must, within 28 days after the service of this notice, 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 admit liability in respect of the offence AND 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.

NOTE: If the offence you are alleged to have committed is an OVERLOADING OFFENCE, you should not make written submissions as to penalty as the penalty for the offence is fixed and cannot be reduced by the Court.

Non-payment of 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 within 28 days after the service of this notice, you will become liable to pay COSTS IN ADDITION TO A FINE (unless the informant decides not 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

Form 10—*continued*

NOTES TO DEFENDANT

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 before or within 28 days after the service of this notice on you. Late payment or payment made to any other address will not constitute a defence to proceedings in respect of the alleged offence.

INFORMATION ABOUT STATIONARY AND
MOVING VEHICLE OFFENCES

7. The notes in this paragraph relate to STATIONARY AND MOVING VEHICLE OFFENCES only, and should be ignored if the offence alleged against you is not a stationary or moving vehicle offence.

(1) Section 41A(2) and section 41B(2) of the Transport Act 1962 provide that proceedings for a stationary or a moving vehicle offence may be taken against one or more of the following persons:

(a) The person who allegedly committed the offence; or

(b) Any person who, at the time of the alleged offence, was registered as the owner, or one of the owners of the vehicle involved in the offence, in a register kept under section 18 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986; or

(c) Any person who, at the time of the alleged offence, was lawfully entitled to possession of the vehicle involved in the offence (whether jointly with any other person or not),—

whether or not (in the case of a person referred to in item (b) or item (c) of paragraph 7(1) above) the person was the driver, person in charge, or user of the vehicle at the time the alleged offence was committed and whether or not the person is an individual or a company or other body.

Form 10—*continued*

NOTES TO DEFENDANT

(2) Where proceedings in respect of a stationary or moving vehicle offence are taken against you not as the person who allegedly committed the stationary or moving vehicle offence but as a person who, at the time of the alleged offence, was—

(a) The registered owner or one of the registered owners of the vehicle; or

(b) A person lawfully entitled to possession of the vehicle (whether jointly with any other person or not)—

the acts or omissions of the driver, person in charge, or user of the vehicle at the time of the alleged offence are conclusively presumed to be your acts or omissions unless you establish the defence described in paragraph 7(4) below (with respect to stationary vehicle offences) or paragraph 7(5) below (with respect to moving vehicle offences).

Defences relating to Stationary and Moving Vehicle Offences

(3) You have a further defence (in addition to that indicated in paragraph 6 above) against proceedings relating to the alleged stationary or moving vehicle offence if—

(a) A reminder notice in respect of the offence has been filed in Court under section 21(3) of the Summary Proceedings Act 1957 in respect of another person; or

(b) A Court has imposed on another person a fine, or costs, or both, in respect of the offence under the Summary Proceedings Act 1957.

Further Defence Relating to *Stationary* Vehicle Offences

Form 10—*continued*

NOTES TO DEFENDANT

(4) Where the acts or omissions of another person are presumed to be yours (as set out in paragraph 7(2) above) you may overcome the presumption and have a complete defence (in addition to those indicated in paragraph 6 or paragraph 7(3) above) to any court proceedings against you for the stationary vehicle offence if you prove—

- (a) That, at the time of the alleged offence,—
 - (i) You were not lawfully entitled to possession of the vehicle (either jointly with any other person or severally); or
 - (ii) Another person was unlawfully in charge of the vehicle; and
- (b) You advised the enforcement authority in writing of this forthwith after becoming aware of the alleged offence; and
- (c) You did everything reasonably possible on your part to comply with all requests of the enforcement authority to supply information to that authority regarding the person who was lawfully entitled to possession, or who was in charge, of the vehicle, at the time of the alleged offence.

Further Defence Relating to *Moving* Vehicle Offences

(5) Where the acts or omissions of another person are presumed to be yours (as set out in paragraph 7(2) above) you may overcome the presumption and have a complete defence (in addition to those indicated in paragraph 6 or paragraph 7(3) above) to any court proceedings against you for the moving vehicle offence if you prove—

- (a) That, at the time of the alleged offence,—
 - (i) You were not lawfully entitled to possession of the vehicle (either jointly with any other person or severally); or
 - (ii) Another person was driving the vehicle; and

Form 10—*continued*

NOTES TO DEFENDANT

(b) You advised the enforcement authority in writing of this forthwith after becoming aware of the alleged offence; and

(c) You gave to the enforcement authority a statutory declaration—

(i) Identifying the driver, by giving the name and address of the driver or such other particulars within your knowledge as may lead to the identification of the driver; or

(ii) Establishing that you could not identify the driver, after taking all reasonable steps to do so.

NOTE: Paragraph 7 above summarises sections 41A and 41B of the Transport Act 1962. Those sections fully set out the law regarding liability for stationary and moving vehicle offences.

8. When writing please include the date of the infringement, the reminder notice number, the vehicle registration number [*if shown on the front of this form*], and your address for replies.

NOTE: ALL PAYMENTS, ALL QUERIES, AND ALL CORRESPONDENCE REGARDING THIS INFRINGEMENT MUST BE DIRECTED TO THE INFORMANT AT THE ADDRESS SHOWN.

Form 26

Attachment order where default in payment of
fine

CR No:

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

To: [*Full name*]

of [*Address*]

Form 26—*continued*

CR No:

I am satisfied that you are the employer¹ of [*Full name*] of
[*Address*] (**the Defendant**).

The Defendant was on the ... day of ... 19... convicted of ... by
the District Court at ... and was ordered to pay:

Fine \$... Court costs \$... Other costs \$...

The Defendant has made default in paying those sums.

Because of this default, I direct that the total amount stated below
as being payable by the Defendant must, by way of weekly
payments of \$..., be a charge on any salary or wages² that from
time to time while this order remains in force become payable
by you to the Defendant.

The charge shall accrue from week to week, and on each [*Specify
day*] in each week.

You are therefore required, while this order is in force, to deduct
from each amount that becomes payable by you to the Defendant
by way of salary or wages an amount equal to the amount
obtained by multiplying [*Here state the amount of the weekly
payments specified above*] by the number of complete weeks
ending with [*Here state the day specified above as the day in each
week on which weekly payments accrue*] that have elapsed since
the date on which this order came into force, or the date of the last
such deduction, as the case may require.

Each amount deducted must be paid to the Registrar of the
District Court at ... not later than the 20th day of the month after
the month in which the deduction is made.

You do not have to make deductions that total more than the total
amount stated below as being payable by the Defendant.

Form 26—*continued*

CR No:

If any deduction would reduce the net amount payable by you to the Defendant below \$... per week, you must deduct only the amount that would leave the Defendant that amount net per week (**the protected earnings rate**).

This order comes into force on the date on which it is served on you (**or on [Insert date], whichever is the later*) and, unless you are notified otherwise, remains in force for a period of ... weeks.

Amount unpaid by Defendant	\$
----------------------------	----

Enforcement fee	\$
-----------------	----

Total amount payable by Defendant	\$
-----------------------------------	----

Dated at this day of
..... 19 ...

.....

Registrar.

¹As to the meaning of the term employer, see note 1 overleaf

²As to the meaning of the term salary or wages see note 1 overleaf

NOTES TO EMPLOYER

1. Section 79 of the Summary Proceedings Act 1957 defines the term **salary or wages** to include—

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

(b) Earnings related compensation under the *Accident Compensation Act 1972* or the *Accident Compensation Act 1982* or the *Accident Rehabilitation and Compensation Insurance Act 1992*:

Form 26—*continued*

- (c) A bonus or an incentive payment:
- (d) A payment of commission:
- (e) A payment in consideration of work performed under a contract for services:
- (f) A benefit.

That section also defines the term **employer** to include a person or body making payments of a kind referred to in paragraph (a) or paragraph (b) above.

2. This attachment order applies whether or not the contract of employment in respect of which the salary or wages are due existed at the date on which this order was made.

3. The following have priority over this attachment order:

(a) Any attachment order or deduction notice made or given or issued under any of the following Acts:

- (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) The recovery of payments under section 86 of the Social Security Act 1964.

4. This attachment order has priority over any assignment or charge created by the Defendant whether before or after the making of the order.

5. It is an offence to fail without reasonable excuse to comply with this order.

6. If you do not make payments as required, you could be sued for the amount owing.

Form 26—*continued*

7. You must notify the Registrar of the District Court within 7 days if the Defendant leaves or is dismissed from your employment.
8. It is an offence to dismiss or alter the Defendant's position in your business or undertaking by reason of this order having been served on you.
9. If you are forced to reduce the amount of any deduction from the Defendant's salary or wages so as to leave the Defendant the minimum net amount per week specified overleaf, you should notify the Registrar of the District Court immediately.
10. If in doubt as to your obligations under this order, you should consult a solicitor or the Registrar immediately.

DIANE WILDERSPIN,
Acting 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 November 1998, amend the Summary Proceedings Regulations 1958. The amendments are to make those regulations consistent with amendments made to the Summary Proceedings Act 1957 by—

- (a) The Summary Proceedings Amendment Act (No 2) 1998 (relating to Community Magistrates); and
- (b) The Summary Proceedings Amendment Act (No 3) 1998 (relating to Registrars' powers and collection of fines).

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