



Sheriffs' Fees Amendment Regulations 2004

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 26th day of May 2004

Present:

Her Excellency the Governor-General in Council

Pursuant to section 100A of the Judicature Act 1908, Her 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

- (1) These regulations are the Sheriffs' Fees Amendment Regulations 2004.
- (2) In these regulations, the Sheriffs' Fees Regulations 1988¹ are called "the principal regulations".

¹ SR 1988/34

2 Commencement

These regulations come into force on 1 July 2004.

3 New regulation 1A inserted

The principal regulations are amended by inserting, after regulation 1, the following regulation:

“1A Interpretation

In these regulations, **the Act** means the Judicature Act 1908.”

4 New regulation 2 substituted

The principal regulations are amended by revoking regulation 2, and substituting the following regulation:

“2 Fees prescribed

In any proceedings before the High Court or the Court of Appeal or the Supreme Court, whether under the Act or any other enactment, the fees specified in the Schedule will, in respect of the matters specified in that schedule, be levied and taken by any Sheriff, Deputy Sheriff, Sheriff’s officer or bailiff, or any other person employed under any Sheriff or Deputy Sheriff.”

5 New regulations 2A to 2D inserted

The principal regulations are amended by inserting, after regulation 2, the following regulations:

“2A Power to waive fees

“(1) A person (the **applicant**) otherwise responsible for the payment of a fee mentioned in the Schedule may apply to a Registrar for a waiver of that fee.

“(2) The Registrar may waive the fee payable by the applicant, if satisfied—

“(a) on the basis of 1 of the criteria specified in subclause (3), that the applicant is unable to pay the fee; or

“(b) that the proceeding,—

“(i) on the basis of 1 of the criteria specified in subclause (4), concerns a matter of genuine public interest; and

“(ii) is unlikely to be commenced or continued unless the fee is waived.

- “(3) For the purposes of these regulations, an applicant is unable to pay the fee sought to be waived if—
- “(a) the applicant has been granted legal aid in respect of the matter for which the fee is payable; or
 - “(b) the applicant has not been granted legal aid in respect of the matter for which the fee is payable and the applicant—
 - “(i) is dependent for the payment of his or her living expenses on a benefit of a kind specified in any of paragraphs (a) to (e), (h), and (j) of the definition of **income-tested benefit** in section 3(1) of the Social Security Act 1964; or
 - “(ii) is wholly dependent for the payment of his or her living expenses on New Zealand superannuation under the New Zealand Superannuation Act 2001 or a veteran’s pension under the War Pensions Act 1954; or
 - “(iii) would otherwise suffer undue financial hardship if he or she paid the fee.
- “(4) For the purposes of these regulations, a proceeding that concerns a matter of genuine public interest is—
- “(a) a proceeding that has been or is intended to be commenced to determine a question of law that is of significant interest to the public or to a substantial section of the public; or
 - “(b) a proceeding that—
 - “(i) raises issues of significant interest to the public or to a substantial section of the public; and
 - “(ii) has been or is intended to be commenced by an organisation that, by its governing enactment, constitution, or rules, is expressly or by necessary implication required to promote matters in the public interest.
- “(5) An application under subclause (1) must be made in a form approved for the purpose by the chief executive of the Ministry of Justice unless, in a particular case, the Registrar considers that an application in that form is not necessary.

“2B Payment of fee may be postponed pending determination of application for waiver or review

- “(1) A Registrar may, on application by a person who is awaiting the determination of an application under regulation 2A, or section 100B of the Act, postpone the payment of the fee to which the application relates until the date on which the person is notified of the determination.
- “(2) A Registrar may exercise the power under subclause (1) if satisfied that the person awaiting the determination of his or her application would be prejudiced if the matter to which the fee relates did not proceed before the determination.
- “(3) An application under subclause (1) must be made in a form approved for the purpose by the chief executive of the Ministry of Justice unless, in a particular case, the Registrar considers that an application in that form is not necessary.

“2C Recovery of postponed fee

- “(1) This regulation applies to a fee (the **fee**) that has been postponed under regulation 2B.
- “(2) If the effect of a determination under regulation 2A or section 100B of the Act is that the fee is not to be waived, the fee—
- “(a) must be paid, without delay, to the Registrar or to a Sheriff; and
- “(b) is recoverable as a debt due to the Crown in any court of competent jurisdiction.
- “(3) Following a determination that has the effect referred to in subclause (2), the person responsible for paying the fee may not take a step in the proceeding to which the fee relates unless the fee is paid.
- “(4) This regulation has effect subject to regulation 2B during any period that the question of the waiver of the fee is the subject of a pending application under section 100B of the Act.

“2D Power to refund fees

- “(1) A Registrar may, on application made to him or her, refund a fee that has already been paid if satisfied that—
- “(a) no application, under regulation 2A, for a waiver of the fee was made; and
- “(b) the fee would have been waived, in accordance with regulation 2A, had that application been made; and

- “(c) the criteria that would have justified the waiver still apply at the date of the application for the refund.
- “(2) An application under subclause (1) must be made in a form approved for the purpose by the chief executive of the Ministry of Justice unless, in a particular case, the Registrar considers that an application in that form is not necessary.”

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 1 July 2004, amend the Sheriffs' Fees Regulations 1988 by replacing the fee waiver provisions in the regulations with provisions corresponding to the current fee waiver provisions in relation to the High Court.

Regulation 2A provides that a person who is unable to pay a fee that is required in connection with a proceeding or an intended proceeding may apply to a Registrar for a waiver of the fee. A Registrar may waive the fee payable by the applicant if he or she is satisfied that the applicant is unable to pay the fee, or that the proceeding concerns a matter of genuine public interest and is unlikely to be commenced or continued unless the fee is waived.

Regulation 2B provides that a person who is awaiting the determination of an application for a waiver of a fee, or a review of a Registrar's decision, may apply to a Registrar to have the payment of the fee postponed. A Registrar may postpone the payment of a fee if he or she is satisfied that the applicant would be prejudiced if the matter to which the fee relates did not proceed before the determination.

Regulation 2C provides that if it is determined that a fee is not to be waived, the fee is recoverable as a debt to the Crown. The fee must be paid without delay and no further step may be taken in the proceeding to which the fee relates until the fee is paid.

Regulation 2D provides that a person may apply to the Registrar for a refund of a fee that has already been paid. A Registrar may refund

a fee that has already been paid if he or she is satisfied that no application for a waiver of the fee was made and that, had such an application been made, the fee would have been waived. The Registrar must also be satisfied that the criteria that would have justified the waiver still apply at the date of the application for a refund.

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

Date of notification in *Gazette*: 3 June 2004.

These regulations are administered in the Ministry of Justice.
