SUMMARY PROCEEDINGS AMENDMENT REGULATIONS (NO. 6) 1998

MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 14th day of December 1998

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

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.

ANALYSIS

1. Title and commencement
2. Amendments to form 5B
3. Amendments to form 9A
4. New form 10 substituted

SCHEDULE

New Form 10 Substituted in First Schedule of Principal Regulations

REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Summary Proceedings Amendment Regulations (No. 6) 1998, and are

part of the Summary Proceedings Regulations 1958* ("the principal regulations").

(2) These regulations come into force on 1 March 1999.

2. Amendments to form 5B—Form 5B in the First Schedule of the principal regulations is amended—

(a) By omitting the words "section 58B of the Transport Act 1962", and substituting the words "section 69 of the Land Transport Act 1998":

(b) By omitting the words "section 58 (4) (a) of the Transport Act 1962", and substituting the words "section 77 (3) (a) of the Land Transport Act 1998":

(c) By omitting the words "being a summary offence against section 58 (1) (a) of the Transport Act 1962", and substituting the words "being an offence against section 56 (1) of the Land Transport Act 1998":

(d) By omitting the words "being a summary offence against section 58 (1) (f) of the Transport Act 1962", and substituting the words "being an offence against section 57 (1) of the Land Transport Act 1998".

3. Amendments to form 9A—Form 9A in the First Schedule of the principal regulations is amended by omitting the words "section 41B of the Transport Act 1962", and substituting the words "section 133 of the Land Transport Act 1998".

4. New form 10 substituted—The First Schedule of the principal regulations is amended by revoking form 10, and substituting the form 10 set out in the Schedule of these regulations.

*S.R. 1958/38 (Reprinted with amendments Nos. 1 to 9: S.R. 1980/84)
Amendment No. 10: (*Revoked by S.R. 1987/311*)
Amendment No. 11: (*Revoked by S.R. 1987/311*)
Amendment No. 12: (*Revoked by S.R. 1987/311*)
Amendment No. 13: S.R. 1985/231
Amendment No. 14: (*Revoked by S.R. 1988/37*)
Amendment No. 15: S.R. 1987/211
Amendment No. 16: S.R. 1987/311
Amendment No. 17: (*Revoked by S.R. 1991/189*)
Amendment No. 18: S.R. 1989/12
Amendment No. 19: (*Revoked by S.R. 1997/322*)
Amendment No. 20: S.R. 1992/70
Amendment No. 20: (*Revoked by S.R. 1997/322*)
Amendment No. 21: S.R. 1993/81
Amendment No. 22: S.R. 1993/150
Amendment No. 23: S.R. 1993/252
Amendment No. 24: S.R. 1993/314
Amendment No. 25: S.R. 1996/26
Amendment No. 26: S.R. 1996/154
Amendment 1997: S.R. 1997/322
Amendment 1998: S.R. 1998/64
Amendment (No. 2) 1998: S.R. 1998/133
Amendment (No. 3) 1998: S.R. 1998/223
Amendment (No. 4) 1998: S.R. 1998/292
Amendment (No. 5) 1998: S.R. 1998/329

SCHEDULE Reg. 4

NEW FORM 10 SUBSTITUTED IN FIRST SCHEDULE OF PRINCIPAL REGULATIONS

Form 10

Notice No. .....

REMINDER NOTICE IN RESPECT OF INFRINGEMENT OFFENCE

Section 21 (2) and (3C) (b), Summary Proceedings Act 1957

INFORMANT

C.R. NO.: .....

TO DEFENDANT

Name:	Date of Birth: .....
Address:	Sex: .....
.....	Occupation: .....
.....	Driver Licence Number: .....

THE INFORMANT SHOWN ABOVE ALLEGES THAT YOU COMMITTED AN INFRINGEMENT OFFENCE

ON [*Date*] AT [*Time*]

AT [*Place*] 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:

1 A moving vehicle infringement offence ☐

2 An overloading infringement offence ☐

3 A stationary vehicle infringement offence ☐

4 Any offence (other than a moving vehicle infringement offence, overloading vehicle infringement offence, or stationary vehicle infringement offence) specified in the Second Schedule of the Transport Act 1962 ☐

5 Any other offence specified as an infringement offence against the Land Transport Act 1998 ☐

6 An infringement offence against some Act (other than the Transport Act 1962 or the Land Transport Act 1998) ☐

[*Mark box beside relevant offence*]

INFRINGEMENT NOTICE ISSUED BY

[*Name or number, if any, of officer who issued notice*]

THE PENALTY FOR THE OFFENCE IS:

Infringement fee (excluding towage fee):
$ .....

Amount of infringement fee unpaid:
$ .....

Towage fee: $ .....

Other (specify): $ .....

Total payable: $ .....

Demerit points: .....

OTHER PENALTIES: .....

.....

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

CHEQUES, 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.

SCHEDULE—*continued*

NEW FORM 10 SUBSTITUTED IN FIRST SCHEDULE OF PRINCIPAL REGULATIONS—*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. Moving vehicle offences:

2. Overloading offences:

3. Stationary vehicle offences:

4. Any other offence (other than a moving vehicle offence, overloading offence, or stationary vehicle offence) specified in the Second Schedule of the Transport Act 1962:

5. Any other offence specified as an infringement offence against the Land Transport Act 1998:

6. 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 or the Land Transport Act 1998) 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.

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 an offence to which demerit points apply (other than an offence detected by approved vehicle surveillance equipment), demerit points will be recorded against you upon payment of the infringement fee (or upon conviction of the offence). The number of demerit points that will be imposed is shown on the front of this notice.

SCHEDULE—*continued*

NEW FORM 10 SUBSTITUTED IN FIRST SCHEDULE OF PRINCIPAL REGULATIONS—*continued*

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.

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 alleged against you is an OVERLOADING OFFENCE, you should not make written submissions as to penalty as the penalty for the offence is fixed and may not 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

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.

SCHEDULE—*continued*

NEW FORM 10 SUBSTITUTED IN FIRST SCHEDULE OF PRINCIPAL REGULATIONS—*continued*

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) of the Transport Act 1962 and section 133 of the Land Transport Act 1998 provide that proceedings for a stationary or moving vehicle offence may be taken against 1 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 1 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 (in the case of a stationary vehicle offence) 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.

(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 1 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 omission of the driver, person in charge, or (in the case of a stationary vehicle offence) 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) or (3D) 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.

SCHEDULE—*continued*

NEW FORM 10 SUBSTITUTED IN FIRST SCHEDULE OF PRINCIPAL REGULATIONS—*continued*

Further Defence Relating to *Stationary* Vehicle Offences

(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 immediately 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

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

(c) You gave 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 section 41A of the Transport Act 1962 and section 133 of the Land Transport Act 1998. 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.

SCHEDULE—*continued*

NEW FORM 10 SUBSTITUTED IN FIRST SCHEDULE OF PRINCIPAL REGULATIONS—*continued*

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

MARIE SHROFF,
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 1999, amend forms 5B and 9A in the First Schedule of the principal regulations and also replace form 10 in that Schedule in order to incorporate changes to section references and procedures which are necessary as a consequence of the enactment of the Land Transport Act 1998.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 17 December 1998.
These regulations are administered in the Ministry of Justice and the Department for Courts.