



Summary Proceedings Amendment Regulations (No 2) 2009

Anand Satyanand, Governor-General

Order in Council

At Wellington this 23rd day of November 2009

Present:

His Excellency the Governor-General in Council

Pursuant to section 212(2)(a) 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.

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal regulations amended	2
4 Schedule 1 amended	2
Schedule 1	3
New form 25 substituted	
Schedule 2	6
New forms 32BA and 32BB inserted	

Regulations

1 Title

These regulations are the Summary Proceedings Amendment Regulations (No 2) 2009.

2 Commencement

These regulations come into force on 1 December 2009.

3 Principal regulations amended

These regulations amend the Summary Proceedings Regulations 1958.

4 Schedule 1 amended

- (1) Schedule 1 is amended by revoking form 25 and substituting the form 25 set out in Schedule 1 of these regulations.
 - (2) The heading to form 32 of Schedule 1 is amended by inserting “other than motor vehicle” after “Notice of property”.
 - (3) The heading to form 32B of Schedule 1 is amended by omitting “by person other than defendant”.
 - (4) Form 32B of Schedule 1 is amended by—
 - (a) omitting “*and 97*” and substituting “, 97, 100Q, 100T, and 100U”; and
 - (b) omitting “[*defendant’s full name*] of [*defendant’s address*]” and substituting “[*full name, address*]”.
 - (5) Schedule 1 is amended by inserting the forms 32BA and 32BB set out in Schedule 2 of these regulations after form 32B.
-

Schedule 1
New form 25 substituted

r 4(1)

Form 25**Warrant to seize property for unpaid fine***Sections 87(1)(a), 88(3)(a), 93, and 100F, Summary
Proceedings Act 1957*

District Court:

PPN:

Defendant's date of birth:

Defendant's gender:

To every bailiff or constable

- 1 [Full name, address, telephone number(s)] (the defendant) was ordered to pay the fines specified in the Schedule to this warrant.

The fines have not been paid.

Unless the total amount stated below is paid, you are authorised to seize any property that apparently belongs to the defendant. This includes any motor vehicle that is jointly owned by the defendant and another person or persons.

Amount unpaid: \$

Enforcement fee: \$

Total: \$

- 2 *Omit this paragraph if it does not apply.*

[Full name, address, telephone number(s), date of birth] (the substitute) was served with a written caution on [date] that a motor vehicle belonging to the substitute could be seized if the defendant defaults in paying another fine for a traffic offence committed using a motor vehicle belonging to the substitute.

The amount of overdue fines arising out of the defendant's use of the substitute's motor vehicle(s), excluding seizure costs, is: \$[amount].

Unless those fines are paid, you are authorised to seize any motor vehicle that apparently belongs to the substitute. This includes any motor vehicle that is jointly owned by the substitute and another person or persons.

Form 25—*continued*

- 3 You may do any of the following:
- (a) if you have reasonable cause to believe that any property belonging to the defendant is on premises occupied by or under the control of the defendant, you may, after producing the warrant to any person apparently in charge of those premises, enter those premises, by force if necessary:
 - (b) if you have reasonable cause to believe that a motor vehicle in which the defendant or the substitute appears to have an ownership interest or other interest is on any premises, you may, after producing the warrant to any person apparently in charge of the premises, enter those premises, by force if necessary:
 - (c) you may seize a motor vehicle in which the defendant or the substitute appears to have an ownership interest or other interest, regardless of the likely resale value of the motor vehicle or the extent of the defendant's or the substitute's interest in the motor vehicle:
 - (d) if the motor vehicle in which the defendant or the substitute appears to have an ownership interest or other interest has been impounded for 14 days, you may seize the motor vehicle from an impoundment yard:
 - (e) you may immobilise a motor vehicle prior to, or instead of, seizing it.
- 4 You must deliver seized property to the Registrar of the District Court at [*place*] or to a person or place specified by the Registrar.

Date:

Signature:
(Registrar)

Form 25—*continued*

Schedule of unpaid fines

CR No	Offence date	Offence details	Fine imposed	Offence type
<i>[specify]</i>	<i>[specify]</i>	<i>[specify]</i>	<i>[specify]</i>	<i>[specify if of- fence is traffic offence commit- ted in substi- tute's motor ve- hicle]</i>

Schedule 2
New forms 32BA and 32BB inserted

r 4(5)

Form 32BA
Notice of motor vehicle seized under warrant
Section 100F(6), Summary Proceedings Act 1957

District Court:

PPN:

To *[full name, address]* (the defendant/substitute*)

*Select one.

- 1 *For this paragraph, select the statement that applies.*
Statement A (Select this statement if notice given to defendant.)
You have not paid the fines listed in the attached Schedule.
The total amount you owe is stated below.
Amount unpaid: \$
Enforcement fee: \$
Total: \$
Statement B (Select this statement if notice given to substitute.)
You were served with a written caution on *[date]* that a motor vehicle owned by you could be seized if *[full name, address]* (the defendant) defaulted, within 4 years after that caution, in paying another fine for a traffic offence committed while using a motor vehicle belonging to you. This has happened.
The defendant has not paid the fines listed in the attached Schedule. The total amount of overdue fines arising out of the defendant's use of your motor vehicle(s), excluding seizure costs, is \$*[amount]*.
- 2 Because of these unpaid fines, a warrant to seize property for unpaid fines has been executed against a motor vehicle/motor vehicles* in which you have an ownership interest or other interest.
*Select one.
- 3 The following motor vehicle/vehicles* belonging to you has/have* been seized under this warrant: *[describe each*

Form 32BA—*continued*

motor vehicle seized, giving the make and model, year of first registration, and registration number].

- 4 You must, within 7 days after the date of this notice, notify the Registrar of the District Court at [*place*]
(a) whether you own or have an interest in the motor vehicle/vehicles*; and
(b) of the name and address of any other person who owns or has an interest (including any encumbrance) in the motor vehicle/vehicles*.

*Select one.

Date:

Place:

Signature:

(bailiff/constable*)

*Select one.

Contact number for queries

If you have any queries, phone this court on [*telephone number*].

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.

Notes to the defendant/substitute*

*Select one.

- 1 Within 7 days after the date on this notice,—
(a) the seized motor vehicle/vehicles* will be returned if you pay the total amount stated in paragraph 1 of this form, and the costs of removing and storing the motor vehicle/vehicles*, to the District Court. (The court will tell you the amount of these costs.)

Form 32BA—*continued*

The seized motor vehicle/vehicles* will be returned to the person it was/they were* seized from.

If any seized motor vehicle was seized from an impoundment yard, you will also have to pay the impoundment costs. The motor vehicle will be released at the end of the impoundment period. If these costs are not paid by the date set by the court, the motor vehicle may be sold to recover these costs:

*Select one.

- (b) if any seized motor vehicle is financed or leased, you must tell the finance company or the leasing company that it has been seized by the court. If you do not do so, and a person with a financial interest in that motor vehicle loses money through its sale, you may have to compensate them for their loss:
- (c) a person who owns or has an interest in any seized motor vehicle (other than you or a joint owner) can claim that motor vehicle by submitting a written application to this District Court. The claim form is available from the District Court. If the claim is successful, and the motor vehicle has not already been sold, it will be returned. If the motor vehicle has been sold, the money from the sale will be returned instead.

You can prevent the sale of any seized motor vehicle before a claim is considered by the court by paying the costs for at least 8 days' storage, and any recurring storage costs.

- 2 After those 7 days, the seized motor vehicle/vehicles* will be sold.

*Select one.

- 3 *For this paragraph, select the statement that applies.*

Statement A (select this statement if motor vehicle(s) seized from defendant)

The money received from the sale will be used to pay the fines and the seizure and sale costs, including any motor vehicle

Form 32BA—*continued*

impoundment costs. Any remaining money will be paid to you or the motor vehicle owner(s) unless a court decides otherwise.

Statement B (select this paragraph if motor vehicle(s) seized from substitute)

The money received from the sale will be used to pay the fines incurred for traffic offences committed by the defendant in your motor vehicle(s) and the seizure and sale costs and any impoundment costs. Any remaining money will be paid to you or the motor vehicle owner(s) unless a court decides otherwise.

Notes to substitute only

- 1 You can challenge the seizure of a motor vehicle within 7 days after the date on this notice on any of the following grounds:
 - (a) at any time when the traffic offences specified in the attached Schedule were committed by the defendant,—
 - (i) you did not own or have an interest in the motor vehicle; or
 - (ii) the motor vehicle was stolen or converted; or
 - (iii) the motor vehicle had been let on hire in accordance with a rental service licence under the Land Transport Act 1998; or
 - (b) you took all reasonable steps to prevent the defendant from committing the traffic offence(s); or
 - (c) you had not been served with a written caution that your motor vehicle(s) could be seized and sold to pay the defendant's fines if the defendant defaulted in paying another fine for a traffic offence committed in your motor vehicle(s); or
 - (d) you were a party to an encumbrance such as a hire purchase agreement relating to the motor vehicle and had no other relationship with the defendant.
- 2 If your challenge is successful, the motor vehicle will be returned. The challenge form is available from the District Court.
- 3 If a motor vehicle was seized from an impoundment yard, the impoundment costs will have to be paid. The motor vehicle will be released at the end of the impoundment period. If these

Form 32BA—*continued*

costs are not paid by the date set by the court, the motor vehicle may be sold to recover these costs.

Notes to towage provider

You are authorised to tow a seized motor vehicle that appears not to be registered, warranted, or licensed under the Land Transport Act 1998.

Notes to auctioneer

- 1 You are authorised to sell a seized motor vehicle that appears not to be registered, warranted, or licensed under the Land Transport Act 1998.
- 2 You must advise—
 - (a) potential purchasers that they will need to register and licence an unregistered motor vehicle before it can be driven on a public road and tell them the fees charged for reregistration and licensing; and
 - (b) the purchaser that an unregistered motor vehicle must be towed. It must not be driven on a public road until it has been registered, warranted, and licensed under the Land Transport Act 1998.
- 3 If the court has deregistered a motor vehicle because it is unroadworthy, you must sell it only as parts or as scrap metal.

Schedule of unpaid fines

CR No	Offence date	Offence details	Fine imposed	Offence type
[specify]	[specify]	[specify]	[specify]	[specify if offence is traffic offence committed in substitute's motor vehicle]

Form 32BB

Warrant to recover motor vehicle from creditor

Section 100X, Summary Proceedings Act 1957

District Court:

PPN:

To every bailiff or constable

- 1 On *[date]*, the District Court at *[place]* released the following motor vehicle to *[full name, address, telephone number(s)]* (the creditor):
Make and model:
Year of first registration:
Registration number:
- 2 The court ordered the creditor to sell the motor vehicle to recover money owed by *[full name, address, and date of birth of defendant or substitute]*.
- 3 As at the date of this warrant, the creditor had not sold the motor vehicle.
- 4 Unless the motor vehicle has now been sold, I direct you to recover the motor vehicle from the creditor and to deliver it to the Registrar of the District Court at *[place]* or to a person or place specified by the Registrar.

Date:

Signature:
(Registrar)Rebecca Kitteridge,
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 December 2009, amend the Summary Proceedings Regulations 1958. The regulations are consequential on the Summary Proceedings (Vehicle Seizure) Amendment Act 2009, which comes into force on 1 December 2009. The regulations amend existing forms and substitute and insert new forms for the new regime.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 26 November 2009.
These regulations are administered by the Ministry of Justice.
