



Summary Proceedings Amendment Regulations 2011

Rt Hon Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 31st day of October 2011

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 212 of the Summary Proceedings Act 1957, Her Excellency the Administrator of the Government, 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 2011.

- 2 **Commencement**
These regulations come into force on 13 February 2012.

- 3 **Principal regulations amended**
These regulations amend the Summary Proceedings Regulations 1958.

- 4 **Interpretation**
 - (1) Regulation 2 is amended by revoking the definition of **fine**.
 - (2) Regulation 2 is amended by inserting the following definition in its appropriate alphabetical order:
“**declaration of financial capacity** means, in relation to a person, a declaration containing the information described in regulation 15G”.

- 5 **Regulations 15F and 15G substituted**
Regulations 15F and 15G are revoked and the following regulations substituted:

“15F Registrar or bailiff may require declaration of financial capacity

- “(1) The Registrar may, before entering into an arrangement with a defendant or a representative of the defendant under section 86 of the Act, require from that person a declaration of financial capacity.
- “(2) A bailiff may, before entering into an arrangement with a defendant or a representative of the defendant under section 86C of the Act, require from that person a declaration of financial capacity.

“15G Declaration of financial capacity

A declaration of financial capacity must contain information about all of the person’s sources of income, assets, liabilities, and outgoings, including, without limitation,—

- “(a) salary and wages:
- “(b) benefits and pensions:
- “(c) commissions:
- “(d) interest and dividends:
- “(e) income from rental property:
- “(f) ownership of real estate:
- “(g) vehicle ownership:
- “(h) ownership of other property:
- “(i) income and realisable assets that the person does not currently have but which it is anticipated that the person will receive during the 12 months following the date of giving the declaration:
- “(j) debts:
- “(k) essential outgoings of the person and his or her dependants.”

6 Regulation 15I substituted

Regulation 15I is revoked and the following regulation substituted:

“15I Criteria for determining whether to enter, vary, suspend, or cancel arrangement extending time to pay or for payment by instalments

- “(1) This regulation applies if—

- “(a) a Registrar is deciding whether to enter into an arrangement under section 86 of the Act; or
 - “(b) a Registrar is deciding whether to vary, suspend, or cancel an arrangement under section 86A of the Act; or
 - “(c) a bailiff is deciding whether to enter into an arrangement under section 86C of the Act; or
 - “(d) a bailiff is making a determination under section 86D of the Act.
- “(2) If this regulation applies, the Registrar or bailiff (as the case may require)—
- “(a) must, for the purposes of assessing the financial position of the defendant or, if the case requires, the defendant’s representative, consider any information provided in a declaration of financial capacity given by that person; and
 - “(b) may have regard to any other circumstances relating to the financial position of the defendant or the defendant’s representative that the Registrar or bailiff considers relevant.”

7 Fee and expenses in respect of enforcement of fine

- (1) Regulation 15K is amended by revoking subclause (1) and substituting the following subclause:
- “(1) Subject to the other provisions of this regulation, if a defendant defaults in the payment of a fine and as a consequence a warrant is issued, an attachment order is made, a sentence is imposed, or a deduction notice is issued under any of sections 83(1B), 83(2), 87(2), or 88AE(1) of the Act,—
- “(a) the fee specified in Schedule 2 is payable by the defendant in respect of the enforcement of the fine; but
 - “(b) no more than 1 amount is payable under this subclause in respect of the enforcement of the same fine.”
- (2) Regulation 15K(3) is amended by omitting “88(3)” and substituting “88AE(1)”.
- (3) Regulation 15K(4) is amended by omitting “removing, storing, or auctioning” and substituting “seizing, removing, transporting, or storing the property, or selling, assigning, applying, auctioning, or otherwise disposing of or releasing the property”.

8 Orders for sentences of community work, community detention, or home detention

Regulation 15L is amended by omitting “section 88(3)” and substituting “section 88AE(1)”.

9 Regulation 15O revoked

Regulation 15O is revoked.

10 Regulation 15P substituted

Regulation 15P is revoked and the following regulation substituted:

“15P General form of applications

- “(1) Every defendant or person who, in relation to proceedings under the Act, makes any application or claim or seeks any order or other action must lodge with the Registrar of the Court an application in form 61 of Schedule 1 or in a form to the like effect unless—
- “(a) any provision of the Act provides otherwise; or
 - “(b) otherwise authorised by the Court, District Court Judge, Community Magistrate, or Registrar having jurisdiction in respect of the matter; or
 - “(c) another form is prescribed for the purpose in Schedule 1; or
 - “(d) no form is prescribed for the purpose and the chief executive has, under section 209A of the Act, approved and issued a form for the purposes of the Act.
- “(2) After receiving an application under subclause (1), the Registrar of the Court must—
- “(a) appoint a time and place for the hearing of the application (unless the order or action sought is made or taken without a hearing); and
 - “(b) give to the applicant and any other person who the Registrar considers should be notified, or who a District Court Judge or Community Magistrate directs be notified, notice in form 62 of Schedule 1 (notice of receipt of the application and the time and place for the hearing) unless any of paragraphs (a) to (d) of subclause (1) apply.

“(3) In this regulation, **Registrar of the Court** means Registrar of the Court in which the proceedings were commenced or to which they have been transferred.”

11 Amendment to form 28 of Schedule 1

Form 28 of Schedule 1 is amended by omitting “*Section 88(3)(b)*” and substituting “*Section 88AE(1)(b)*”.

12 Amendment to form 31A of Schedule 1

- (1) The heading to form 31A of Schedule 1 is amended by omitting “88(3)” and substituting “88AE(1)”.
- (2) Form 31A of Schedule 1 is amended by omitting “*Section 88(9)*” and substituting “*Section 88AG(1)*”.

13 Amendment to form 32AA of Schedule 1

Form 32AA of Schedule 1 is amended by omitting “*Section 106E(3)*” and substituting “*Section 106EA(1)*”.

14 Revocation of forms in Schedule 1

Forms 23, 25, 26, 27, 28A, 28B, 30, 32, 32A, 32B, 32BA, and 32BB of Schedule 1 are revoked.

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 13 February 2012, amend the Summary Proceedings Regulations 1958. The amendments reflect changes made to the Summary Proceedings Act 1957 (the **Act**) by the Summary Proceedings Amendment Act 2011.

Clause 4 amends regulation 2 (interpretation) by revoking the definition of fine because that term is now defined in the Act and by inserting a definition of declaration of financial capacity.

Clause 5 revokes and replaces regulation 15F to reflect that the Act now authorises the Registrar or bailiff to enter into arrangements with a representative of the defendant. *Clause 5* also revokes and replaces regulation 15G. *New regulation 15G* sets out the information required in a declaration of financial capacity.

Clause 6 revokes and replaces regulation 15I. *New regulation 15I* prescribes the criteria to be applied by the relevant decision maker when deciding to enter, vary, suspend, or cancel an arrangement extending the time to pay a fine or for payment by instalments.

Clause 7 amends regulation 15K(1) and (3) to reflect changes in the Act and to add new provisions in the Act to which this regulation applies. Regulation 15K(4) currently provides that the defendant is liable to pay any amount that the Registrar certifies is an expense reasonably incurred in removing, storing, or auctioning the property. To reflect the manner in which property may now be dealt with under the Act, regulation 15K(4) is amended to enable the Registrar to certify expenses reasonably incurred in seizing, removing, transporting, or storing the property, or selling, assigning, applying, auctioning, or otherwise disposing of or releasing the property.

Clause 8 makes a consequential amendment to regulation 15L.

Clause 9 revokes regulation 15O.

Clause 10 revokes and replaces regulation 15P, which requires, except in certain situations, all applications in respect of any proceedings under the Act to be made in form 61 of Schedule 1 and all notices of hearing to be in form 62 of Schedule 1. *New regulation 15P* includes a new situation in which those forms are not required to be used, namely, where there is no prescribed form and another form is approved and issued by the chief executive of the Ministry of Justice for the purposes of the Act.

Clauses 11 to 13 make consequential amendments to forms 28, 31A, and 32AA of Schedule 1.

Clause 14 revokes forms 23, 25, 26, 27, 28A, 28B, 30, 32, 32A, 32B, 32BA, and 32BB of Schedule 1.

**Summary Proceedings Amendment
Regulations 2011**

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These regulations are administered by the Ministry of Justice.
