



## **Child Support Amendment Rules 2009**

Rt Hon Dame Sian Elias, Administrator of the Government

### **Order in Council**

At Wellington this 29th day of June 2009

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 234 of the Child Support Act 1991, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following rules.

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## Rules

### 1 Title

These rules are the Child Support Amendment Rules 2009.

### 2 Commencement

These rules come into force on 3 August 2009.

### 3 Principal rules amended

These rules amend the Child Support Rules 1992.

### 4 Notice of defence

Rule 22(3) is revoked.

### 5 Affidavit to accompany notice of defence

Rule 23(1) is amended by omitting “defendant” and substituting “respondent”.

### 6 New rule 23A inserted

The following rule is inserted after rule 23:

#### “23A Non-compliance with rules 22 and 23

- “(1) This rule applies to a respondent who—
- “(a) is served with an application; and
  - “(b) fails to file and serve a notice of defence and accompanying affidavit within the time specified in or under rule 22.
- “(2) If the respondent appears on the day of the hearing of the application to oppose or support the application, the Judge must decide whether it is in the interests of justice to allow the respondent to be heard.
- “(3) In deciding, for the purpose of subclause (2), whether to allow the respondent to be heard in relation to the application, the Judge must take into account the following matters:
- “(a) any reason given by the respondent for failing to comply with rules 22 and 23; and
  - “(b) the effect of the respondent’s failure to comply with rules 22 and 23 on—
    - “(i) the other parties to the proceeding;
    - “(ii) the management of the proceeding.

- “(4) The Judge may—
- “(a) allow the respondent to be heard in relation to the application on such terms as the Judge thinks fit; or
  - “(b) decline to allow the respondent to be heard.
- “(5) If the Judge allows the respondent to be heard in relation to the application, the Judge may—
- “(a) either—
    - “(i) proceed with the hearing of the application in accordance with any directions that the Judge thinks fit; or
    - “(ii) adjourn the hearing of the application and give any directions about the adjourned hearing that the Judge thinks fit; and
  - “(b) make an order against the respondent for costs properly incurred in consequence of his or her failure to comply with rules 22 and 23.
- “(6) If the Judge declines to allow the respondent to be heard, the Judge may proceed with the hearing of the application as if the respondent had not appeared.”

## 7 Schedule 1 amended

- (1) Form CS 26 of Schedule 1 is amended by omitting the last paragraph under the heading “*Notice of defence*” and substituting the following paragraphs:
- “You should note that if you do not file and serve a notice of defence and accompanying affidavit within that time you may not be able to defend the application. On the day of the hearing of the application, should you appear, the Judge may—
- “(a) allow you to take part in the hearing of the application only on such terms as the Judge thinks fit; or
  - “(b) decline to allow you to take part.
- “You should also note that the Judge may make an order against you for costs properly incurred as a consequence of your failure to file and serve a notice of defence and accompanying affidavit within time.
- “If you do not file and serve a notice of defence and accompanying affidavit, the case may proceed without further notice to you.”

- (2) Form CS 27 of Schedule 1 is amended by omitting the last paragraph under the heading “*Notice of defence*” and substituting the following paragraphs:
- “You should note that if you do not file and serve a notice of defence and accompanying affidavit within that time you may not be able to defend the application. On the day of the hearing of the application, should you appear, the Judge may—
- “(a) allow you to take part in the hearing of the application only on such terms as the Judge thinks fit; or
- “(b) decline to allow you to take part.
- “You should also note that the Judge may make an order against you for costs properly incurred as a consequence of your failure to file and serve a notice of defence and accompanying affidavit within time.
- “If you do not file and serve a notice of defence and accompanying affidavit, the case may proceed without further notice to you.”

Rebecca Kitteridge,  
Clerk of the Executive Council.

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### Explanatory note

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules, which come into force on 3 August 2009, amend the Child Support Rules 1992 (the **principal rules**).

The amendments—

- inserts a *new rule 23A* in the principal rules that sets out the options available to a Judge where a respondent appears at the hearing of an application without having filed a notice of defence and accompanying affidavit within the time specified. These options include declining to allow the respondent to be heard and proceeding with the hearing as if the respondent had not appeared:

- insert further information in forms CS 26 and CS 27 of Schedule 1 of the principal rules to take account of *new rule 23A*.

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

Date of notification in *Gazette*: 2 July 2009.

These rules are administered by the Ministry of Justice.

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