



High Court Amendment Rules 2021

Patsy Reddy, Governor-General

Order in Council

At Wellington this 19th day of April 2021

Present:

The Right Hon Jacinda Ardern presiding in Council

These rules are made under section 148 of the Senior Courts Act 2016—

- (a) on the advice and with the consent of the Executive Council; and
- (b) with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee continued under section 155 of the Senior Courts Act 2016 (of whom at least 1 was a Judge of the High Court).

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Rules

1 Title

These rules are the High Court Amendment Rules 2021.

2 Commencement

These rules come into force on 20 May 2021.

3 Principal rules

These rules amend the High Court Rules 2016.

4 Rule 17.84 replaced (Power to issue arrest order)

Replace rule 17.84 with:

17.84 Power to issue arrest order

(1) In this subpart,—

enforceable undertaking means an undertaking described in subpart 4 of Part 2 of the Contempt of Court Act 2019

original court order has the same meaning as court order in subpart 4 of Part 2 of the Contempt of Court Act 2019.

(2) If a person has applied to the court to enforce an original court order or an enforceable undertaking and that person is entitled to make an application under section 16(2) of the Contempt of Court Act 2019, a Judge may issue an order arresting the non-complying party if,—

(a) in the case of an application to enforce an original court order, the Judge is satisfied that the non-complying party has been served with the order and has not complied with it; or

(b) in the case of an application to enforce an undertaking, the Judge is satisfied that the non-complying party had knowledge or proper notice of the terms of the enforceable undertaking and has not complied with it.

5 Rule 17.85 amended (Court may impose sanctions for non-compliance with original court order)

- (1) In the heading to rule 17.85, after “**court order**”, insert “**or enforceable undertaking**”.
- (2) In rule 17.85(1), after “original court order”, insert “or enforceable undertaking”.

6 Rule 17.86 amended (Effect of sequestration order)

Replace rule 17.86(2)(a) with:

- (a) the party complies with the original court order or the enforceable undertaking or an order to pay money into court in the way specified in the order or undertaking; or

7 Rule 18.1 amended (Types of proceedings)

After rule 18.1(b), insert:

Declarations of inconsistency under the New Zealand Bill of Rights Act 1990

- (ba) proceedings (other than appeals) in which the sole relief claimed is a declaration that an enactment is inconsistent with the New Zealand Bill of Rights Act 1990:

8 Rule 19.4 amended (Certain directions may be sought by originating application)

After rule 19.4(e), insert:

- (f) a trustee seeking directions as to whether or not to bring or defend a proceeding in their capacity as a trustee (a **Beddoe application**).

9 New rule 19.4A inserted (Application under rule 19.4(f))

After rule 19.4, insert:

19.4A Application under rule 19.4(f)

- (1) A Beddoe application may initially be made without notice and must be accompanied by the following:
 - (a) a memorandum—
 - (i) describing the proceeding in respect of which directions are sought and explaining its significance to the trust estate; and
 - (ii) stating all other relevant matters relating to the content or conduct of the application, such as whether a stay of the proceeding is sought pending the determination of the application; and
 - (b) an affidavit containing evidence of—
 - (i) the value and nature of the trust assets; and

- (ii) the estimated costs likely to be incurred by the trust, directly or indirectly, in the proceeding and any other expected adverse impact of the proceeding on the trust; and
- (iii) the advice of an appropriately qualified lawyer as to the prospects of success of the proceeding and whether bringing or defending the proceeding is in the best interests of the trust; and
- (iv) all other relevant matters; and
- (c) an application for directions as to service giving reasons (if applicable) why it is proposed that—
 - (i) any beneficiary should not be served with the application; and
 - (ii) any part of the evidence prescribed in this rule should be withheld from being served on any person; and
 - (iii) any person should be excluded from any part of the hearing.
- (2) This rule is subject to rule 7.46.

10 Schedule 1, form E 9D amended (Warrant of committal for failing to comply with court order)

- (1) In Schedule 1, in the form E 9D heading, after “court order”, insert “or undertaking”.
- (2) In Schedule 1, form E 9D, replace paragraph 1 with:

1 On [date], this court ordered that [name] be committed to prison for failing to comply with an original court order/enforceable undertaking*.

*Select one.

11 Schedule 1, form E 9E amended (Order for fine for failing to comply with court order)

- (1) In Schedule 1, in the form E 9E heading, after “court order”, insert “or undertaking”.
- (2) In Schedule 1, form E 9E, replace paragraph 1 with:

1 At the sitting of the [specify court] at [place] on [date], you were ordered to pay a fine of \$[amount] for failing to comply with an original court order/enforceable undertaking*.

*Select one.

12 Schedule 1, form E 9F amended (Order for community work for failing to comply with court order)

- (1) In Schedule 1, in the form E 9F heading, after “court order”, insert “or undertaking”.
- (2) In Schedule 1, form E 9F, replace paragraph 1 with:

1 At the sitting of the [*specify court*] at [*place*] on [*date*], you were ordered to do [*period of time*] of community work for failing to comply with an original court order/enforceable undertaking*.

*Select one.

13 Schedule 1, form E 10 amended (Sequestration order)

In Schedule 1, form E 10, replace paragraph (a) with:

- (a) the liable party complies—
- (i) with the original court order made at [*place, date*] in the way specified in the court order; or
 - (ii) with the undertaking given at the court at [*place, date*]; or

Michael Webster,
Clerk of the Executive Council.

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 20 May 2021, amend the High Court Rules 2016 (the **principal rules**). The principal rules are amended as follows:

- rules 17.84, 17.85, and 17.86 are amended to enable an arrest order to be issued and sanctions to be imposed for breach of an undertaking as well as a court order. The power to arrest a person and impose sanctions for breach of an undertaking was inadvertently omitted when the rule was amended to give effect to the Contempt of Court Act 2019:
- rule 18.1 is amended to expressly provide that Part 18 of the principal rules applies to proceedings in which the sole relief sought is a declaration of inconsistency under the New Zealand Bill of Rights Act 1990:
- rule 19.4 is amended and *new rule 19.4A* is inserted to clarify and codify the proper manner of bringing a Beddoe application. A trustee can apply to the High Court for directions as to whether to bring or defend proceedings on behalf of the trust at the expense of the trust. When doing so, the trustee must fully disclose the strengths and weaknesses of the case. If a Beddoe order is granted, the trustee is indemnified by the trust for the costs of bringing or defending the main proceedings: *Sunde v Sunde* [2019] NZCA 552 at fn 15, citing *McLaughlin v McLaughlin* [2018] NZHC 3198, [2019] NZAR 286 at [18]–[37]:
- several court forms in Schedule 1 are amended to allow for the enforcement of undertakings as well as original court orders under section 16 of the Contempt of Court Act 2019.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 22 April 2021.
These rules are administered by the Ministry of Justice.