

SUMMARY PROCEEDINGS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Summary Proceedings Act 1957 by providing new systems for infringement offences and fines enforcement. The new system for fines enforcement will apply in respect of all fines, not just those arising from infringement offences.

Clause 1 relates to the Short Title and commencement. The commencement date is 1 June 1987.

Clause 2 defines or redefines terms used in relation to the new infringement offences procedure. It includes provision for an informant to be other than a natural person. It also defines "salary and wages" for the purposes of attachment orders in relation to fines enforcement.

Clause 3 gives a Court presided over by 2 or more Justices of the Peace jurisdiction in respect of infringement offences.

Clause 4: The effect of this clause is that section 20A of the principal Act will be available for minor traffic offences.

Clause 5 substitutes a new system for infringement offences. Section 21 of the principal Act is replaced. The procedure in section 20A will apply to minor traffic offences that are not infringement offences. Section 20A does not apply to minor traffic offences at present.

Section 21 provides for the commencement of a prosecution for an infringement offence by the filing in a District Court of a reminder notice or a notice of time and date of hearing.

Section 21A specifies the matters that are to be included in a reminder notice. In the case of transport offences, the infringement notice would be the document frequently issued at the time an offence is allegedly committed or the parking infringement notice usually left on parked vehicles.

Section 21B provides that where a defendant has not paid the infringement fee or given notice denying the allegation, the informant is to serve a reminder notice on the defendant. At this stage the reminder notice is not filed in Court. Further time is given to pay the infringement fee or deny the allegation. The reminder notice must be served on the defendant within 90 days of the service of the infringement notice.

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Section 21C provides that where a defendant has not paid the infringement fee or given notice denying the allegations within 28 days after the service of the reminder notice, a duplicate of the reminder notice may be filed in Court.

This will be the first point at which the matter will come to the attention of the Court. The reminder notice filed in Court must be accompanied by a certificate setting out the details of service of the infringement notice and reminder notice, and certifying that the infringement fee has not been paid and the allegation has not been denied. Where the allegation is denied, and the matter is to continue, the proceedings will be commenced under *section 21D*.

The informant is not required to certify that the infringement fee was not paid within 28 days after the service of the reminder notice. It may be that the fee has been paid to the informant but the informant is not aware of the payment when filing the notice, e.g., a motorist resident in Christchurch makes a payment by mail to the Rotorua office of the Ministry of Transport.

So long as there is a time gap between the expiry of the 28-day period and the filing of the notice, the payment and the notice should be reconciled so as to prevent the notice being filed. If the payment is made after that period has expired, the payment might be made before or after the duplicate of the reminder notice is filed in Court. The defendant may make the payment without being aware of whether or not the notice has been filed in Court. Such a payment, while no doubt welcomed by the informant, is nevertheless out of time. The problem is not new and was dealt with in relation to transport infringement offences by amendments to section 42A of the Transport Act 1962 in 1985 following *Mogridge v Ministry of Transport* (M No. 186/82 High Court Christchurch 26.5.82 Casey J.). Those provisions, suitably amended, are set out in *section 21G*.

Section 21D provides the procedure where a defendant denies an allegation. Notice of denial can be given not later than 28 days after the service of a reminder notice on the defendant or such longer time as the informant may allow. It may also be given in response to an infringement notice, before a reminder notice is received.

If the matter is to proceed further, the informant must serve a notice of time and place of hearing on the defendant and, by virtue of the application of section 18 of the principal Act, the notice must be filed in a Court as if it were an information. By virtue of *section 21D (5)* the notice cannot be filed in a Court until 28 days after its service on the defendant, thereby giving the defendant further time to pay the infringement fee if desired.

The only options available to a defendant are to pay the infringement fee, or to deny the allegation. There is no provision for a defendant to plead guilty and put any mitigating factors to the Court.

Section 21E provides for the enforcement of an infringement fee and costs as if they were a fine in cases where no notice of denial is given. The change from a fee to a fine is achieved by filing a reminder notice in Court. The methods by which a fine may be enforced are set out in the new *Part III (clause 9)*.

Section 21F provides that a defendant is deemed to be convicted on the filing of a reminder notice. The practical significance of this, apart from the fact of conviction, is that appeals may lie from the conviction, and the conviction may also result in demerit points in the case of transport offences.

Section 21G carries forward with appropriate changes section 42A (7) and (7A) of the Transport Act 1962 and gives them general application to all infringement offences.

Subclause (1) provides that it is a defence to proceedings for an infringement offence if the defendant proves that the infringement fee was paid before the earliest date on which a reminder notice or notice of the time and place of hearing could be filed in Court. In any such case, the notice should not have been filed.

Subclause (2) provides that it is no defence if the infringement fee is paid after the earliest date on which a reminder notice or notice of time and place of hearing could be filed in a Court, even if no such notice has actually been filed. Where the notice is filed, the infringement fee is credited towards the fine payable by the defendant. The defendant will also be liable for costs.

Section 21H provides a defence for parking infringement offences that proceedings have been taken against another person for the offence and a conclusive presumption that a person proceeded against as the owner or person in lawful possession of a vehicle committed the offence. These provisions are a re-enactment of existing provisions in the Transport Act 1962 and are required because of the provision for owner liability for parking offences made in section 42 of that Act. Although the presumption is conclusive, it is subject to a provision enabling a person to avoid liability in certain circumstances.

Section 21I provides that where a Court finds a defendant guilty of an infringement offence the Court shall impose a fine the same as the infringement fee. The Court has no discretion to impose a greater or lesser fine or order that no fine be paid.

The defendant will also be liable to pay costs.

Section 21J provides presumptions in relation to service of documents, and non-payment of infringement fees similar, but not identical to, section 42A (8) of the Transport Act 1962.

Clauses 6 and 7 relate to the mode of service of documents and the persons who may serve them. Documents relating to infringement offences will be able to be served by ordinary post, and in the case of traffic offences an address given by or on behalf of the defendant under the Transport (Vehicle and Driver Registration and Licensing) Act 1986 may be used.

Any officer or employee of an informant may serve any document relating to an infringement offence. The term "informant" in relation to infringement offences is defined in *clause 2* of the Bill.

Clause 8 substitutes a new section 78B relating to provision for a hearing where a defendant makes a statutory declaration that a reminder notice or notice of time and date of hearing was not served.

Clause 9 substitutes a new Part relating to the enforcement of fines.

The principal features are—

- (a) A requirement that a convicted defendant prepare a statement of means before a fine is imposed in certain circumstances:
- (b) Abolition of disqualification from driving orders and prohibition orders under the Sale of Liquor Act 1962 as enforcement procedures:
- (c) Replacement of distress warrants and warrants to seize motor vehicles with a single warrant to seize property:
- (d) The ability of a Registrar to take enforcement action without first requiring the defendant to appear, under arrest if necessary, as at present.

The detail of the new system is set out in the following sections.

Section 79 defines the term "fine" for the purposes of enforcement. It will include costs, witness, interpreters, and solicitors fees, towage fees, assessment

centre fees (see section 30B of the Transport Act 1962), etc., and prescribed fees payable in respect of the enforcement of the fine.

By virtue of section 25 of the Criminal Justice Act 1985 sentences to make reparation will also be enforceable under this Part.

Section 80 continues the present general position that fines are payable within 28 days of being imposed.

Section 81 continues the present situation where a Court can allow a greater time for payment, or allow payment by instalments, or both.

Section 82 requires a Court to order a person to complete a statement of means before imposing a fine or fines in excess of \$250 or where the proposed fine or fines, together with unpaid fines, exceed \$250.

No statement of means need be completed if the Court is satisfied that the person has the ability to pay the fine or fines or that a document before the Court (such as a legal aid application) contains a sufficiently accurate statement of means.

The intention is that this should see that Courts do not impose fines that there is no realistic prospect of the defendant being able to pay.

Section 83 continues the present power to make an order for immediate payment in specified circumstances which are not altered. Where an order for immediate payment is not complied with, the Court may direct that a warrant to seize property or a warrant of commitment be issued.

Section 84 provides for the delivery to a convicted person of a notice setting out the details of the fine payable and the defendant's rights to appeal or seek time to pay and the consequences of non-payment.

Failure to send the notice does not invalidate later proceedings, and the provision makes it clear that it is the defendant's responsibility to find out the decision of the Court and the defendant's rights and obligations.

These provisions are similar to the present section 86.

Section 85 provides for the sending of a further notice of the fine to the defendant if the fine is not paid within 21 days of it being imposed unless an extension of time has been granted or sought, or if it is not necessary that this notice or the notice under *section 84* be served on the defendant.

Such notices are not required if there has been an order for immediate payment, or if further time to pay or payment by instalments has been ordered.

Section 86 gives a convicted person the right to apply to a Registrar for an extension of time to pay a fine. An extension of up to 12 months, including payment by instalments, may be granted.

Section 87: Where a fine is not paid in the proper time, the Registrar may issue a warrant to seize property or make an attachment order in relation to the salary or wages of the defendant.

The present requirement to first have the defendant appear before the Registrar in every case is not continued. However, the Registrar may issue a warrant of arrest to have the defendant brought before a Judge to have a substituted sentence imposed if the Registrar is satisfied that the enforcement procedures are not likely to be effective or that the defendant cannot pay the fine.

Section 88 provides for the arrest and bringing before a District Court Judge of a convicted person whose fine remains unpaid after enforcement by means of a warrant to seize property or attachment order has been tried.

The District Court Judge, after considering the report of the Registrar and the financial position of the convicted person may—

- (a) Refer the matter to the Registrar with a direction for either a warrant to seize property or an attachment order, or both, to be issued:
- (b) Direct that a warrant of commitment be issued:
- (c) Impose a sentence of community service, periodic detention, or corrective training:
- (d) Direct that a lesser fine be enforced or direct that the fine not be enforced.

Section 89 sets out a defendant's rights of representation and appeal in various enforcement proceedings.

Section 90 sets out the scale of imprisonment for non-payment of fines in terms similar to the present section 103.

Section 91 provides for the release from prison or a sentence of periodic detention or community service on payment of the fine for which the sentence was imposed.

Section 92 sets out the effect of a warrant of commitment, which is to require the imprisonment of the defendant for a period determined by the Judge unless the fine is paid.

Section 93 sets out the effect of a warrant to seize property.

A new provision here is the power to seize a vehicle by immobilising it rather than removing it.

The powers of a constable or bailiff to enter premises by force if necessary is now confined to premises occupied by or under the control of the defendant.

Seized property may be sold at auction to meet the fine (which includes the enforcement costs).

The present provision providing protection for all acts of a person enforcing a warrant of seizure, except those done in bad faith, is not continued.

Sections 94 to 100 relate to attachment orders and their enforcement. The provisions are similar to those in the Family Proceedings Act 1980. Where there is an attachment order under this Part and the Family Proceedings Act 1980, the order under this Part is reduced or cancelled if necessary so that the protected earnings rate under the Family Proceedings Act 1980 is not affected.

Section 101 provides for the transfer of fines recovery and enforcement proceedings and orders from one District Court to another.

Section 102 provides that warrants of commitment and sentences of periodic detention are generally not to be imposed unless other efforts to recover the fine have been unsuccessful or are inappropriate.

Section 103 continues the present provision for the review by a District Court Judge of the orders and decision of a Registrar.

Clauses 10 and 11 provide transitional provisions for infringement offences and fines enforcement.

The effect of *clause 10* is that the new procedure for infringement offences will only apply in respect of infringement offences committed or alleged to have been committed on or after 1 June 1987. The present system will continue to apply for all offences committed or alleged to have been committed before that date.

The effect of *clause 11* is that the new Part III relating to fines enforcement, while applying in respect of all fines imposed on or after 1 June 1987, will also apply—

- (a) To the enforcement of fines imposed before 1 June 1987 where the default occurs on or after that date:
- (b) To the enforcement of fines imposed before 1 June 1987 where the default occurs before that date but no enforcement action has been taken before that date:

(c) Where some enforcement action has already been taken but further action is required after 1 June 1987. The enforcement action already under way is to be completed as if the new Part III had not been passed, but the further action, if required, will be taken under the new Part III.

Clause 12 makes consequential amendments. It is expected that further consequential amendments will be needed to section 14 of, and the Schedule to, the Litter Act 1979.

Clause 13 makes consequential repeals.

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A BILL INTITULED

An Act to amend the Summary Proceedings Act 1957

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Summary Proceedings Amendment Act 1987, and shall be read together with and deemed part of the Summary Proceedings Act 1957* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of June 1987.

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing paragraph (c) of the definition of the term “informant” (as substituted by section 15 (1) of the Transport Amendment Act 1980), and substituting the following paragraph:

“(c) A person, Department, corporation, or local authority that files a reminder notice under **section 21c** of this Act or a notice of time and place of hearing under **section 21b** of this Act:”.

(2) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “informant” (as so substituted) the following definitions:

“‘Infringement notice’ means a notice issued under section 42A of the Transport Act 1962 or section 14 of the Litter Act 1979:”

“‘Infringement offence’ means any offence under any Act in respect of which a person may be issued with an infringement notice:”.

(3) Section 2 (1) of the principal Act is hereby amended by adding to the definition of the term “minor traffic offence” (as inserted by section 15 (2) of the Transport Amendment Act 1980) the words “; but does not include any offence for which proceedings are commenced in accordance with section 12 or **section 21** of this Act.”

*R.S. Vol. 9, p. 583

Amendments: 1982, Nos. 47, 131, 158; 1985, Nos. 51, 55, 99, 162, 191; 1986, No. 73

(4) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “representative”, the following definition:

5 “‘Salary or wages’, for the purposes of sections 96, 97, and 100 of this Act, includes—

“‘(a) A retiring allowance or pension or other payment of a like nature:

10 “‘(b) Earnings related compensation under the Accident Compensation Act 1972 or the Accident Compensation Act 1982:”

PART I

INFRINGEMENT OFFENCES

3. Jurisdiction in respect of summary offences—Section 9 (3) of the principal Act is hereby amended by repealing 15 paragraph (b), and substituting the following paragraph:

“‘(b) Where the offence is an infringement offence.”

4. Summary procedure for minor offences—Section 20A of the principal Act (as inserted by section 7 (1) of the Summary Proceedings Amendment Act 1973) is hereby 20 amended by omitting from subsection (12) (as amended by section 17 (2) (b) of the Transport Amendment Act 1980) the words “; but does not include a minor traffic offence”.

5. New sections relating to infringement offences procedure inserted—The principal Act is hereby amended 25 by repealing section 21, and substituting the following sections:

“21. **Prosecution commenced by reminder notice**—
(1) Except as provided in subsection (2) of this section, every 30 prosecution for an infringement offence shall be commenced by the informant filing in a Court a reminder notice under section 21c of this Act or a notice of time and date of hearing under section 21d of this Act.

“‘(2) With the leave of a Registrar or Judge, a prosecution for an infringement offence may be commenced by the issue of a 35 summons.

“‘(3) Section 14 of this Act shall apply in respect of every duplicate reminder notice and notice of time and date of hearing filed in a Court as if it were an information.

“21A. **Contents of reminder notice**—(1) Every reminder 40 notice shall clearly—

- “(a) Inform the defendant of the time, place, and nature of the alleged offence:
- “(b) Specify the infringement fee and any other penalty that may be imposed for the offence and the place where the infringement fee may be paid: 5
- “(c) Contain a statement of the defendant’s right to deny the allegation and request a hearing in respect of it:
- “(d) Contain a statement of the consequences if the defendant does not pay the infringement fee in full and does not make a request under **paragraph (c)** of 10 this subsection:
- “(e) Contain a statement of the effect of the defendant paying the infringement fee in full and accepting any other specified penalty in respect of the offence: 15
- “(f) Contain a statement that the informant believes the accuracy of the allegation against the defendant— and may contain such other information as the Governor-General in Council thinks fit.

“(2) Every reminder notice shall state the consequences of 20 the defendant’s failure to either pay the fine or deny the allegation, including a statement in the prescribed form of the enforcement action that may be taken under **Part III** of this Act.

“**21B. Service of reminder notice**—(1) Where an infringement notice has been issued to a defendant, and the 25 defendant has not, within 28 days of the issue of that notice,—

“(a) Paid the infringement fee; or

“(b) Notified the informant in writing that the defendant denies the allegation—

the informant shall, if it is decided to commence proceedings, 30 serve on the defendant a reminder notice in the prescribed form.

“(2) No reminder notice may be served on a defendant more than 90 days after the issue of the infringement notice in 35 respect of the offence.

“**21c. Action where fine not paid and allegation not denied**—(1) Where an infringement notice has been issued and a reminder notice has been served in respect of an alleged offence and the defendant has not, within 28 days of the 40 service of the reminder notice,—

“(a) Paid the infringement fee; or

“(b) Given notice in writing to the informant that the defendant denies the allegation,—

the informant may, on payment of the appropriate prescribed fee (if any) payable by the informant, file a duplicate of the reminder notice in a Court.

5 “(2) Where a reminder notice is filed in a Court it shall be accompanied by a statement that—

“(a) An infringement notice was issued to the defendant, and the date and method by which it was served:

“(b) A reminder notice was served on the defendant, and the date and method of that service.

10 “21D. **Action where allegation denied**—(1) Where a defendant wishes to deny an allegation in an infringement notice or a reminder notice, the defendant shall give written notice to the informant that the allegation is denied.

15 “(2) The notice of denial given under **subsection (1)** of this section shall be given not later than 28 days after the service of a reminder notice on the defendant or such longer period as the informant may allow.

20 “(3) Where a notice of denial is given under **subsection (1)** of this section before a reminder notice is served on a defendant, it shall not be necessary to serve a reminder notice on the defendant.

25 “(4) Where a notice of denial is given under **subsection (1)** of this section, the informant shall, if it is desired to commence proceedings, arrange for the service of a notice of time and place of hearing in the prescribed form on the defendant, and subsequent proceedings shall be taken as if that notice were a summons.

30 “(5) No notice of time and place of hearing shall be filed in a Court until the expiry of 28 days after the date of its service on the defendant.

35 “(6) Sections 17, 18, 34, 36, 75, 204, 205, and 208 of this Act, Part IV of this Act, and the Costs in Criminal Cases Act 1967 shall apply, with such modifications as are necessary, to every notice of time and place of hearing as if it were an information.

40 “21E. **Enforcement of reminder notice**—Where any duplicate reminder notice is filed in any Court, the infringement fee in respect of the offence as specified in that notice and the appropriate prescribed costs may be enforced as if they were a fine.

“21F. **Defendant deemed to be convicted on filing of reminder notice**—Where a duplicate reminder notice is filed in a Court the defendant shall be deemed to be convicted of

the offence to which it relates; and Part IV of this Act shall apply as if the conviction was made following the determination of an information by a District Court.

“21G. Effect of payment of infringement fee—(1) It shall be a defence to proceedings taken under this Act for an infringement offence if the defendant proves that the infringement fee specified in the infringement notice or reminder notice issued in respect of the offence has been paid to the informant before the earliest date on which the reminder notice or notice of time and place of hearing in respect of the offence could be filed in a Court.

“(2) It shall not be a defence to proceedings taken under this Act for an infringement offence that the infringement fee specified in an infringement notice or reminder notice issued in respect of the offence has been paid after the earliest date on which the reminder notice or notice of time and place of hearing in respect of the offence could be filed in a Court, irrespective of whether or not the notice had been filed when the payment was made; but where any such notice is filed the infringement fee paid shall be applied towards the payment of the fine payable by the defendant.

Cf. 1962, No. 135, s. 42A (7), (7A); 1985, No. 50, s. 8

“21H. Defence that another liable and conclusive presumption of liability—(1) It shall be a defence to proceedings taken under this Act for a parking offence as defined in section 42 of the Transport Act 1962 if the defendant proves that—

“(a) A reminder notice in respect of the offence has been filed under section 21E of this Act in respect of another person; or

“(b) A Court has imposed a fine in respect of the offence under section 21I of this Act in respect of another person.

“(2) It shall be a defence to proceedings taken under this Act against a person pursuant to paragraph (b) or paragraph (c) of section 42 (2) of the Transport Act 1962 if the person proves that—

“(a) At the time the alleged offence was committed—

“(i) The person was 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

5 “(b) Forthwith after becoming aware of the alleged offence the person advised the enforcement authority that, at the time the offence was committed, the person was not lawfully entitled to possession of the vehicle or another person unlawfully had charge of the vehicle, as the case may be; and

10 “(c) The person has done everything reasonably possible to comply with all requests of the enforcement authority to supply to the authority information regarding the person lawfully entitled to possession, or who was in charge, of the vehicle at the time of the alleged offence.

15 “(3) Subject to **subsection (2)** of this section, in any proceedings taken under this Act pursuant to paragraph (b) or paragraph (c) of section 42 (2) of the Transport Act 1962 it shall be conclusively presumed that—

20 “(a) The person was the driver, person in charge, and user of the vehicle at the time of the alleged offence (whether or not the person is an individual); and accordingly

“(b) The acts or omissions of the driver, person in charge, or user of the vehicle at that time were the acts or omissions of the first-mentioned person.

25 “(4) This section shall have effect notwithstanding anything to the contrary in any Act or rule of law.

Cf. 1962, No. 135, s. 42 (3)–(6); 1980, No. 96, s. 7; 1985, No. 50, s. 6

30 “21I. **Fine to be same as infringement fee**—Where a defendant is found by a Court to have committed an offence for which an infringement notice has been issued, the Court shall impose a fine which shall be the same as the infringement fee specified in the infringement notice or, in the case of a speeding infringement offence or a parking infringement offence, the infringement fee for the offence proved, and the
35 defendant shall also be liable to pay such costs as the Court may order or as may be prescribed.

40 “21J. **Presumptions relating to service of notices and non-payment of fees**—In any proceedings for an infringement offence for which an infringement notice has been issued it shall be presumed, unless the contrary is proved, that—

“(a) The infringement notice in respect of the offence has been duly issued to the defendant; and

“(b) Any reminder notice or notice of time and place of hearing, or both, that is required to be served on the defendant has been duly served; and

“(c) The infringement fee in respect of the offence has not been paid.”

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6. Mode of service of documents on defendant—Section 24 (1) of the principal Act is hereby amended by repealing paragraph (d) (as inserted by section 3 (1) of the Summary Proceedings Amendment Act 1985), and substituting the following paragraph:

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“(d) In the case of a notice relating to an infringement offence, by being sent by letter by ordinary post addressed to the defendant at the defendant’s last known place of residence or business or, in the case of an infringement offence against the Transport Act 1962, the Transport (Vehicle and Driver Registration and Licensing) Act 1986, or any regulations or bylaws made under those Acts, by being posted to any address given by or on behalf of the defendant under section 7, section 10, section 15, or section 20 of the Transport (Vehicle and Driver Registration and Licensing) Act 1986.”

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7. Who may serve documents on defendant—(1) The principal Act is hereby amended by repealing section 25, and substituting the following section:

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“25. (1) Except as provided in subsection (2) of this section every summons to a defendant and every other document that is required to be served on a defendant may be served by—

“(a) A constable:

“(b) An officer of the Court:

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“(c) Any person or member of a class of persons authorised by a District Court Judge or Registrar either generally or in respect of a particular case or class of case:

“(d) In the case of a summons to the defendant or other document required to be served on the defendant in proceedings for an offence against any Act regulation or bylaw to which section 68B (1) of the Transport Act 1962 applies, by a traffic officer within the meaning of the Transport Act 1962:

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“(e) In the case of a reminder notice or notice of time and place of hearing relating to an infringement offence, by any person acting in the course of

official duties as an officer or employee of the informant.

“(2) Where any such summons or document is to be served by registered or ordinary letter it shall be so served—

5 “(a) Except in the case of a reminder notice or notice of time and place of hearing relating to an infringement offence, by an officer of the Court posting the summons or document to the defendant:

10 “(b) In the case of a reminder notice or notice of time and place of hearing relating to an infringement offence, by an officer or employee of the informant posting the notice to the defendant.”

(2) Section 3 (3) of the Summary Proceedings Amendment Act 1985 is hereby consequentially repealed.

15 **8. Hearing to be granted where service by post not effective**—The principal Act is hereby amended by repealing section 78A (as inserted by section 18 (1) of the Transport Amendment Act 1980), and section 78B (as inserted by section 4 (1) of the Summary Proceedings Amendment Act 1985), and
20 substituting the following section:

“78B. (1) Where a registered or ordinary letter has been used for the service on a defendant of a reminder notice under **section 21B** of this Act or a notice of time and place of hearing has been so served on a defendant under **section 21D** of this Act,
25 and a duplicate reminder notice has been filed under **section 21E** of this Act or the matter has been dealt with by a Court in the absence of a defendant, a District Court Judge or the Registrar (not being a constable) shall, subject to **subsection (2)** of this section, on the application of the defendant,—

30 “(a) Grant a hearing of the matter and set it down for hearing at a later date; and

“(b) Require another copy of the reminder notice or a copy of the notice of time and place of hearing, or both, to be served on the defendant; and, in any such
35 case the notice or notices shall be served by posting them by ordinary post to any address specified by the defendant in a declaration made by the defendant under **subsection (2) (a)** of this section, or by personal service on the defendant.

40 “(2) No hearing shall be granted under **subsection (1)** of this section unless a statutory declaration made by the defendant declaring that the defendant did not receive the reminder

notice or, having given a notice of denial, did not receive the notice of time and place of hearing, or both; and—

“(a) Specifying an address at which the defendant will accept service by post of a copy of the reminder notice or of the notice of time and date of the hearing; or 5

“(b) Declaring that there is no suitable address at which service by post of those notices may be effected, and specifying an address at which the defendant will accept personal service of either or both of those notices. 10

“(3) Where a hearing has been granted under **subsection (1)** of this section, no enforcement action shall be taken in respect of the fine or any costs prescribed or ordered to be paid by any Court in respect of the offence.”

PART II 15

FINES ENFORCEMENT

9. New Part substituted—The principal Act is hereby amended by repealing Part III, and substituting the following Part:

“PART III 20

“ENFORCEMENT OF FINES

“**79. Interpretation**—In this Part of this Act, unless the context otherwise requires, references to a fine include any sum of money ordered to be paid by a conviction or order or payable by virtue of any conviction or order, whether 25 described as a fine, or as costs, expenses, fees, or otherwise; and includes any prescribed fees or costs payable in respect of the enforcement of any fine.

Cf. 1957, No. 87, s. 79

“**80. Fines generally payable within 28 days**—Except as 30 otherwise provided in this Act, every fine shall be paid within 28 days after the day on which it is imposed.

Cf. 1957, No. 87, s. 84

“**81. Time to pay or payment by instalments**—(1) Where a fine is payable the Court may make an order doing one or 35 both of the following things:

“(a) Allow a greater time than 28 days for payment:

“(b) Allow payment to be made by instalments.

“(2) Where a fine may be paid by instalments and default is made in the payment of any instalment, proceedings may be 40

taken as if default had been made in the payment of all instalments then remaining unpaid.

Cf. 1957, No. 87, s. 83

5 **“82. Statement of means where fine or fines in excess of \$250—**(1) Where a Court, on the conviction of any person, considers that the appropriate penalty would be a fine—

“(a) In excess of \$250; or

10 “(b) That, together with the appropriate penalty for other offences for which the person is convicted, would be in excess of \$250; or

“(c) That, together with other fines that have been imposed on the person and have not been paid, would be in excess of \$250—

15 the Court shall, unless it is satisfied that the person has the financial ability to pay the fine or fines or that any document held in the Court contains a sufficiently accurate statement of the person’s means, order that the person complete a statement of means before imposing the fine.

20 “(2) For the purpose of having a statement of means completed, a Court may direct that a person be detained in the custody of the Court for such time, not exceeding 2 hours, as may be necessary to complete the statement of means.

25 “(3) The failure of any Court to make an order under **subsection (1)** of this section shall not affect the validity of any fine or other penalty imposed by the Court.

“83. Order for immediate payment of fine—(1) Where a fine is to be paid and the Court is of the opinion—

“(a) That the defendant has sufficient means to pay the fine immediately; or

30 “(b) That the defendant has no fixed place of residence; or

“(c) That by reason of the gravity of the offence, the character of the defendant, or other special circumstances, the fine should be paid immediately—

35 the Court may order the defendant to pay the fine immediately, and in that case **section 82** of this Act shall not apply.

“(2) Where any order under **subsection (1)** of this section is not complied with, the Court may—

40 “(a) Direct that a warrant to seize property be issued in the prescribed form; or

“(b) Direct that a warrant of commitment be issued in the prescribed form imposing on the defendant a

period of imprisonment not exceeding the appropriate maximum period prescribed by **section 90** of this Act.

“(3) A warrant of commitment directed to be issued under **subsection (2) (b)** of this section may be issued by any District Court Judge and shall require that, unless the fine is sooner paid, the defendant be imprisoned in a prison for such time determined in accordance with section 90 of this Act as is specified in the warrant. 5

“(4) Where a Court makes any order under **subsection (1)** of this section or gives any direction or imposes any period of imprisonment under **subsection (2)** of this section, a record of the order, direction, or imposition and the grounds on which it is made shall be entered in the Criminal Records required to be kept under section 71 of this Act. 10 15

Cf. 1957, No. 87, s. 85

“84. **Notice of fine**—(1) Where following a conviction a defendant is ordered to pay or becomes liable to pay a fine and no order is made under **section 83 (1)** of this Act for immediate payment, the Registrar shall, as soon as practicable, deliver to the defendant or send to the defendant by ordinary post addressed to the defendant’s place of residence or business, a notice of the fine. 20

“(2) Every notice given under **subsection (1)** of this section shall set out— 25

“(a) The amount of the fine:

“(b) The date on or before which payment of the fine is to be made:

“(c) The times and places at which payment of the fine may be made: 30

“(d) The defendant’s rights to appeal against the conviction or fine:

“(e) The defendant’s right to apply to the Court for an extension of time to pay, whether by instalments or otherwise: 35

“(f) A general description of the action that may be taken if the fine is not paid.

“(3) Failure to comply with this section shall not of itself invalidate any subsequent proceeding.

“(4) Notwithstanding the requirements of this section, it shall be the responsibility of the defendant to take all necessary steps to find out the decision of the Court, the defendant’s obligations under that decision, and the defendant’s rights in relation to that decision. 40

“(5) It shall not be necessary to comply with the requirements of this section in any case where a fine is paid in full before the notice is delivered or sent.

Cf. 1957, No. 87, s. 86

5 “85. **Further notice of fine**—(1) Where—

“(a) A defendant is liable to pay a fine; and

“(b) No order has been made under **section 81** or **section 83** or **section 86** of this Act; and

10 “(c) No application has been made and not determined under **section 86** of this Act; and

“(d) The fine remains unpaid on the expiry of a period of 21 days beginning with the day on which it was imposed—

15 the Registrar shall deliver to the defendant or send to the defendant by ordinary post addressed to the defendant’s place of residence or business, a further notice of the fine.

“(2) The notice given under **subsection (1)** of this section shall—

20 “(a) Set out the matters specified in **paragraphs (a) to (g)** of **section 84 (2)** of this Act:

“(b) Notify the defendant that if the fine remains unpaid on the expiry of a period of 28 days beginning with the day on which it was imposed, and no application has been made for an extension of time to pay, enforcement action may then be commenced by—

25 “(i) An order to seize property; or

“(ii) An attachment order—

and shall set out in general terms the meaning and effects of such orders:

30 “(c) Notify the defendant that, instead of commencing enforcement action as described in **paragraph (b)** of this subsection, the Registrar may issue a warrant to arrest the defendant and have the defendant brought before a District Court Judge with a view to having a substitute sentence imposed.

35 “(3) Failure to comply with this section shall not of itself invalidate any subsequent proceeding.

40 “86. **Extension of time to pay**—(1) Any defendant may make an application to any Registrar for extension of time to pay any fine that is not subject to an order for immediate payment.

“(2) Every application under this section shall be made within 28 days after the day on which the fine was imposed.

“(3) The Registrar may make an order doing either or both of the following things:

“(a) Allow a greater time for payment:

“(b) Allow payment to be made by instalments—

but in no case may the period for which a fine may remain 5
unpaid exceed 12 months beginning with the day on which the
fine was imposed.

“(4) In considering any application under this section the Registrar may—

“(a) Consider any information received from any source 10
concerning the defendant’s financial position:

“(b) Decline to make any order until the defendant appears
before the Registrar for an examination of the
defendant’s ability to pay the fine.

“(6) Where an application is made under this section and has 15
not been determined, the fine to which the application relates
need not be paid, and no proceedings shall be taken for its
enforcement.

“(7) Where a defendant fails to appear before a Registrar for
an examination of the defendant’s ability to pay the fine, the 20
Registrar may refuse the application.

“(8) Where an application under this section is refused and
the period in which the fine may be paid has expired,
enforcement of the fine may proceed.

“(9) Where a fine may be paid by instalments and default is 25
made in the payment of any instalment, proceedings may be
taken as if default had been made in the payment of all
instalments then remaining unpaid.

Cf. 1957, No. 87, s. 88

“**87. Action where fine not paid**—(1) Where there is 30
default in the payment of any fine, the Registrar may—

“(a) Issue a warrant to seize property; or

“(b) Make an attachment order attaching any salary or
wages payable or to become payable to the
defendant. 35

“(2) Where the Registrar is satisfied—

“(a) That no procedure available under **subsection (1)** of this
section is likely to be effective in enforcing the fine;
or

“(b) That the defendant does not have the means to pay the 40
fine—

the Registrar may, instead of taking any action under **subsection
(1)** of this section, issue a warrant to arrest the defendant and

have the defendant brought before a District Court Judge for the purpose of having a substituted sentence imposed.

“(3) Where any person is brought before a District Court Judge on a warrant to arrest issued under **subsection (2)** of this section, **section 88** of this Act shall apply as if the defendant had been brought before the Judge on a warrant to arrest issued under that section.

“(4) Where any action is taken under **subsection (1)** or **subsection (2)** of this section, proceedings in respect of that action shall cease—

“(a) On payment in full of the unpaid amount of the fine and the prescribed costs of the enforcement proceedings; and

“(b) Notification of that payment has been given to the Registrar of the Court from which the enforcement proceedings were taken.

Cf. 1957, No. 87, s. 89

“**88. Action where fine remains unpaid**—(1) Where a fine in respect of which enforcement proceedings have been taken under **section 87** of this Act remains unpaid, the Registrar shall—

“(a) Prepare a report on the circumstances of the case; and

“(b) Issue a warrant to arrest the defendant and have the defendant brought before a District Court Judge.

“(2) The District Court Judge may, after considering the report of the Registrar, and the financial position of the defendant (whether determined from any financial statement prepared by the defendant or from other sources)—

“(a) Refer the matter to the Registrar with a direction that one or both of the matters specified in **section 87 (1)** of this Act, as specified in the direction, be invoked; or

“(b) Subject to **section 102** of this Act, direct that a warrant of commitment in the prescribed form be issued; or

“(c) Subject to sections 29 to 36 and 58 to 67 of the Criminal Justice Act 1985, sentence the defendant to community service:

“(d) Subject to sections 37 to 45 and 58 to 67 of the Criminal Justice Act 1985 and **section 101** of this Act, sentence the defendant to periodic detention:

“(e) Subject to sections 68 to 71 of the Criminal Justice Act 1985, sentence the defendant to corrective training:

“(f) Direct that action be taken under **paragraph (a) or paragraph (b)** of this subsection in respect of a lesser amount

that the fine due in respect of the conviction and any subsequent enforcement proceedings that have been taken:

“(g) Direct that no further enforcement proceedings be taken in respect of the fine for such period or subject to such conditions as directed by the Judge. 5

“(3) Where further time for payment is given or a direction that an order attaching any salary or wages of the defendant is made, the further time given or attachment order shall not extend more than 6 months after the expiry date of any previous time allowed for payment or any previous attachment order in respect of that fine. 10

“(4) A warrant of commitment, or a sentence of periodic detention or community service may be imposed under this section notwithstanding that the offence in respect of which the defendant was ordered to pay the fine was not punishable by imprisonment. 15

“(5) Any warrant of commitment issued under this section may be withdrawn at any time by any District Court Judge.

“(6) Where any direction is given under **subsection (2) (f)** of this section, the difference between the amount due under the fine and the amount in respect of which action is directed to be taken under that provision shall cease to be payable and no proceedings shall be taken or continued for its recovery. 20

“(7) Where a District Court Judge directs the issue of a warrant of commitment or makes any other order under this section the Judge may postpone the issue or suspend the execution of the warrant, or defer the operation of the order for such period or subject to such conditions as the District Court Judge may direct. 25 30

Cf. 1957, No. 87, s. 100

“**89. Rights of representation and appeal**—(1) Every person who is required to attend before a District Court Judge under a warrant to arrest issued under **section 87 (2) (b)** or **section 88 (1) (b)** of this Act or to attend before a Registrar under **section 88 (4) (b)** of this Act shall be entitled to be represented by a barrister or a solicitor of the High Court. 35

“(2) Where a defendant is sentenced to community service, periodic detention, or corrective training under **section 88 (2)** of this Act, the defendant shall have the same right to appeal under section 115 of this Act as if the defendant had been convicted on an information or complaint. 40

“(3) On any such appeal the High Court may, in addition to its powers under section 121 of this Act, remit the matter to a District Court Judge to be dealt with as that Judge thinks fit under **section 88 (2)** of this Act, except that that Judge shall not
5 impose a sentence the same as that appealed against.

Cf. 1957, No. 87, s. 98

“**90. Scale of imprisonment for non-payment of fine**—
The period of imprisonment imposed under this Act in respect of the non-payment of any fine or where the sale of any
10 property under any process does not produce sufficient proceeds to pay the fine, shall be such period as in the opinion of the Court or District Court Judge fixing the period will satisfy the justice of the case, not exceeding,—

“(a) In the case of an offence that was punishable by
15 imprisonment, the maximum term of imprisonment to which the defendant was liable on the conviction, or a period of 1 year, whichever is the less:

“(b) In the case of an offence not punishable by
20 imprisonment, a period of 3 months:

“(c) In the case of an order for costs enforceable under section 7 (1) (b) or section 7 (2) of the Costs in Criminal Cases Act 1967 against an informant or person acting personally, a period of 3 months.

25 Cf. 1957, No. 87, s. 103

“**91. Defendant on substituted sentence to be discharged on payment of fine**—(1) Where a defendant is, on the non-payment of a fine, imprisoned on a warrant of commitment and the Superintendent of the penal institution in which the
30 defendant is imprisoned receives written notice from a Registrar that the fine in respect of which the warrant was issued has been paid, the Superintendent shall discharge the defendant from the penal institution unless the defendant is also in custody for some other reason.

35 “(2) Where a defendant is, on the non-payment of a fine, undergoing a sentence of corrective training and the Superintendent of the penal institution in which the defendant is undergoing the sentence receives written notice from a Registrar that the fine in respect of which the sentence was
40 imposed has been paid, the Superintendent shall discharge the defendant from the penal institution.

“(3) Where a defendant is, on the non-payment of a fine, undergoing a sentence of periodic detention and the warden

of the periodic detention centre to which the defendant is required to report receives written notice from a Registrar that the fine in respect of which the sentence was imposed has been paid the warden shall direct that the defendant is no longer subject to that sentence in respect of the fine. 5

“(4) Where a defendant is, on the non-payment of a fine, subject to a community service order and the probation officer supervising the sentence receives written notice from a Registrar that the fine in respect of which the sentence was imposed has been paid the probation officer shall direct that the defendant is no longer subject to that sentence in respect of the fine. 10

Cf. 1957, No. 87, s. 104

“92. **Effect of warrant of commitment**—A warrant of commitment issued under **section 83 (2) (b)** or **section 88 (2) (b)** of this Act shall require that the defendant be imprisoned in some penal institution for such time as the District Court Judge considers appropriate (not exceeding the appropriate maximum period specified in **section 102** of this Act) unless the fine or any lesser amount directed by the Judge under **section 88 (2) (f)** of this Act is sooner paid. 15 20

Cf. 1957, No. 87, s 102

“93. **Effect of warrant to seize property**—(1) Where any warrant to seize property is issued under **section 87 (1) (a)** of this Act, the warrant shall apply so as to authorise the seizure of any property apparently in the possession of the defendant. 25

“(2) Every warrant to seize property shall contain full details of the fine, the amount remaining unpaid in respect of the fine, and any related costs being recovered as part of the fine.

“(3) For the purpose of executing any warrant to seize property any bailiff or constable may, after producing the warrant to any person in apparent charge of the premises, enter on any premises occupied by or under the control of the defendant, by force if necessary, if that bailiff or constable has reasonable cause to believe that property in respect of which the warrant is issued is on the premises. 30 35

“(4) Any bailiff or constable executing a warrant to seize property who seizes any motor vehicle may do so by immobilising the vehicle by attaching to the vehicle any device designed for that purpose. 40

“(5) All property seized under a warrant to seize property shall be delivered by the bailiff or constable to a Registrar who

shall retain the property until the fine is paid, or the Court or a Registrar otherwise determines.

“(6) Where any property has been seized under a warrant to seize property and the fine in respect of which it was issued
5 remains unpaid, the seized property may be sold at auction on the orders of a Registrar, and the purchaser of any property so sold shall, by virtue of this subsection, obtain good title to the property notwithstanding the interests of the owner or any other person in the property prior to the sale.

10 “(7) Where any property has been seized under a warrant to seize property and any person, other than the defendant in respect of whose unpaid fine the property was seized, claims an interest in the property,—

“(a) As owner, part-owner, or joint owner; or

15 “(b) As owner under a hire purchase agreement; or

“(c) Under a bill of sale or otherwise as a security for a debt;
or

“(d) In any other capacity,—

20 a District Court Judge may order the sale of all or part of the property in such manner and on such terms as the Judge thinks fit, and may direct the application of the proceeds of the sale in such manner and on such terms as the Judge thinks fit.

“(8) Where any property is sold under **subsection (6)** of this section, and before the proceeds of the sale are fully applied or
25 distributed a District Court Judge may direct the application of the proceeds of the sale in such manner and on such terms as the Judge thinks fit where the Judge is satisfied that it would have been appropriate to have made an order under **subsection (7)** of this section before the sale.

30 “(9) Except as provided in any order made by a District Court Judge under **subsection (7)** or **subsection (8)** of this section, any surplus from the sale of any property under **subsection (6)** of this section after the fine, related costs, and costs of the sale have been met shall be paid to the defendant.

35 “(10) Where any property is seized under a warrant to seize property and not sold it shall be returned to the person from whom it was seized or to the person apparently lawfully entitled to possession of it on payment of the fine and related costs.

40 “(11) Every person commits an offence who interferes with any property knowing it to be seized under a warrant to seize property and is liable on summary conviction to imprisonment for a period not exceeding 3 months or to a fine not exceeding

\$2,000, and may be arrested without warrant by any bailiff or constable.

Cf. 1957, No. 87, s. 97

“94. **Effect of attachment order**—(1) Where any attachment order is issued under **section 87 (1) (b)** of this Act, the order shall be in the prescribed form and shall apply as provided in **sections 95 to 97** of this Act. 5

“(2) Nothing in section 97 of the Shipping and Seamen Act 1952 shall apply to an attachment order.

Cf. 1957, No. 87, s. 95 10

“95. **Attachment order to be served on employer**—(1) Where an attachment order is made, a copy of the order shall be served on the employer to whom it relates, either personally or by leaving it at the employer’s place of residence or business, or by sending it by registered letter addressed to the employer at the employer’s place of residence or business. 15

“(2) Where service of an attachment order is effected by registered letter, then, in the absence of proof to the contrary, the order shall be deemed to have been served when it would have been delivered in the ordinary course of post, and in proving service it shall be sufficient to prove that the letter was properly addressed and posted. 20

“(3) Every attachment order shall take effect when a copy of the order is served on the employer in accordance with this section. 25

Cf. 1980, No. 94, s. 105

“96. **Operation of attachment order**—(1) An attachment order shall direct that the money due and payable under the fine shall, by way of weekly payments of such amount as is specified in the attachment order, be a charge on any salary or wages that from time to time while the attachment order remains in force become due and payable by the employer to the defendant. 30

“(2) The charge so created—

“(a) Shall accrue from week to week, and on such day of the week as is specified in the attachment order; and 35

“(b) Shall attach to all salary or wages that become due by the employer to the defendant at any time while the attachment order is in force, whether or not the contract of employment in respect of which the salary or wages so become due existed at the date of the attachment order; and 40

5 “(c) Shall prevail over and have priority to any assignment or charge created by the defendant (whether before or after the making of the attachment order against the defendant), and so that the attachment order shall have the same effect as if no such assignment or charge had been made or created.

“(3) Every attachment order shall specify an amount below which the net earnings paid to the defendant shall not be reduced by reason of compliance with the order.

10 “(4) Every attachment order shall apply for a fixed period stated in the order, and shall not apply for a period of more than 12 months after the date on which the fine was imposed.

15 “(5) No attachment order under this Act shall operate so that together with any attachment order made under the Family Proceedings Act 1980 the net earnings of the defendant are reduced below the protected earnings rate specified under section 105 (4) of that Act; and where necessary the specified amount in any attachment order under this Act shall be reduced or cancelled accordingly.

20 Cf. 1980, No. 94, s. 107

“97. **Liability of employer**—(1) As long as an attachment order remains in force, the employer to whom it relates shall from time to time, whenever any money becomes due and payable by the employer to the defendant by way of salary or wages—

25 “(a) Deduct from that money such sum as is sufficient to satisfy the charge on the money so far as the same has accrued before the day on which the salary or wages becomes due and payable; and

30 “(b) Not later than the 20th day of the month next after the month in which the deduction is made pay the amount so deducted to the Registrar specified in the attachment order.

35 “(2) All sums so deducted are hereby deemed to have been paid by the employer in satisfaction of the salary or wages payable by the employer to the defendant.

“(3) All sums so deducted are hereby deemed to have been paid by the defendant in satisfaction of the defendant’s liability to pay the fine.

40 “(4) Where a defendant in respect of whom an attachment order is in force leaves or is dismissed from the employment of the employer, the employer shall within 7 days notify the Registrar of the Court in which the attachment order was issued.

“(5) Where the employer makes default in the payment of any money in satisfaction of any such charge, that money shall become a debt due by the employer to the Crown, and may be recovered by the Crown by action in any Court of competent jurisdiction. 5

“(6) Every employer commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who fails without reasonable excuse to comply with **paragraph (a) or paragraph (b) of subsection (1)** of this section.

Cf. 1980, No. 94, s. 108 10

“**98. Wrongful treatment of employee**—(1) Every employer commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who dismisses any employee or alters any employee’s position in the employer’s business or undertaking to the employer’s prejudice by reason 15 of an attachment order having been served on the employer.

“(2) In the prosecution for an offence against **subsection (1)** of this section in which it is proved that the employer, within 6 months after the serving on the employer of an attachment order in respect of any employee, dismissed the employee or 20 altered the employee’s position in the employer’s business or undertaking to the employee’s prejudice, it shall be deemed to be proved that the action was taken by reason of the order having been served on the employer unless the employer 25 proves to the contrary.

Cf. 1980, No. 94, s. 116

“**99. Extent to which attachment orders bind the Crown**—(1) In this section—

“‘Employing department’ means—

“(a) A department of State in which a person is 30 employed; and

“(b) In relation to a person to whom any retiring allowance or pension or other payment of a similar nature is payable out of the Government Superannuation Fund or the National Provident 35 Fund, the Treasury:

“‘Servant of the Crown’ means a person in the service of Her Majesty in respect of the Government of New Zealand; and includes a person in temporary or casual service but does not include a person in 40 honorary service; and also includes any person serving in any of the New Zealand Armed Forces; and also includes a person to whom any retiring

allowance or pension or other payment of a similar nature is payable out of the Government Superannuation Fund or the National Provident Fund.

5 “(2) **Sections 95 to 98** of this Act shall bind the Crown to the extent of and subject to **subsection (3)** of this section.

“(3) Where the defendant liable to pay a fine or related costs is a servant of the Crown, an attachment order may be made against the Crown as employer, and—

10 “(a) The employing department shall be named in the order as the employer; and

“(b) Service of the order shall be effected on the permanent head of the employing department, and also on any officer of the Crown (described by the name of the office, the name of the department, and the place where the officer is stationed) specified in the order; and

15 “(c) Service of the order shall be effected in accordance with **section 95** of this Act, and, where service is effected by registered post, it shall be sufficient if the letter is addressed to the person to be served by that person’s official title or any sufficient description without that person’s personal name.

Cf. 1984, No. 94, s. 117

25 “100. **Statement of salary or wages paid**—For the purpose of determining the means of any defendant for the purposes of this Part of this Act, a statutory declaration given by or on behalf of any person stating that the person paid a stated amount of salary or wages to the defendant or in respect of a
30 stated period as the defendant’s employer shall, in the absence of evidence to the contrary, be sufficient evidence of the facts stated in the declaration.

Cf. 1957, No. 87, s. 90

35 “101. **Transfer of enforcement to another District Court**—(1) Where it appears to the Registrar of a Court in which a fine was ordered to be paid or an order was made by the Court or the Registrar of that Court under this Part of this Act, that the fine may be more effectively recovered or the order may be more effectively enforced in another District
40 Court, the Registrar may by an order make the payment of the fine or order enforceable in that Court.

“(2) Every order made under this section shall contain full particulars of the fine or order and the amount due thereunder

and shall, in the absence of proof to the contrary, be sufficient evidence of the facts therein stated.

“(3) As from the date of the making of an order under this section in respect of any fine or order all functions under this Part of this Act relating to that fine or order which if no such certificate had been given would have been exercisable by the convicting Court or the Registrar of that Court shall be exercisable by the Court to which enforcement of the fine or order has been transferred or its Registrar, as the case may be, and not otherwise.

“(4) The power conferred by **subsection (1)** of this section may be exercised in the same manner by a Registrar of a Court to which enforcement of any fine or order has been transferred.

Cf. 1957, No. 87, s. 91

“**102. Restriction on imprisonment**—(1) A District Court Judge shall not direct the issue of a warrant of commitment or sentence a defendant to periodic detention under this Part of this Act for non-payment of a fine unless an examination has been held into the means of the defendant to pay the fine, and the Judge is satisfied that all other methods of enforcing the fine have been considered or tried and that they are inappropriate or unsuccessful.

“(2) Nothing in **subsection (1)** of this section shall apply—

“(a) In the case of a warrant of commitment issued under **section 83** of this Act imposing a period of imprisonment; or

“(b) In the case of a defendant who, at the time of the sentence being imposed, is already undergoing a sentence of detention in a penal institution.

“**103. Review of Registrar’s decision**—(1) Any defendant or other person affected by any order or decision made by a Registrar under this Part of this Act may apply to a District Court Judge for a review of the order or decision.

“(2) On any such review the Judge may confirm, rescind, or vary the Registrar’s order or decision and the order or decision shall have effect, or cease to have effect, accordingly.”

Cf. 1957, No. 87, s. 98

PART III

TRANSITIONAL PROVISIONS, AMENDMENTS, AND REPEALS

10. Transitional provisions for infringement offences— The principal Act shall apply in respect of every infringement

offence committed or alleged to have been committed before the 1st day of June 1987 as if this Act had not been passed.

11. Transitional provisions for enforcement of fines—

(1) Part III of the principal Act, as substituted by section 9 of this Act, shall apply—

5 “(a) In respect of the enforcement of any fine imposed before the **1st day of June 1987** where default in the payment of that fine is made on or after that date:

10 “(b) Where default in the payment of any fine is made before the **1st day of June 1987** and no enforcement action has been taken before that date.

(2) The principal Act shall apply as if this Act had not been passed in any case where enforcement action in respect of any fine has commenced before the **1st day of June 1987** but has not
15 been completed before that date; except that where any such enforcement action is completed and further enforcement action is to be taken, the further enforcement action shall be taken under Part III of the principal Act as substituted by section 9 of this Act.

20 **12. Consequential amendments—**The enactments specified in the **First** Schedule to this Act are hereby amended in the manner indicated in that schedule.

13. Consequential repeals—The enactments specified in the **Second** Schedule to this Act are hereby repealed.

SCHEDULES

Section 12

FIRST SCHEDULE
CONSEQUENTIAL AMENDMENTS

Act	Amendment
<p>1962, No 135—The Transport Act 1962 (R.S. Vol 16, p. 659)</p>	<p>By repealing section 42, and substituting the following section:</p> <p>“42. Owner liability for parking offences—(1) In this section,—</p> <p>“ ‘Parking offence’ means parking in any portion of a road in breach of any act or regulation, or of any bylaw made under the authority of section 72 of this Act:</p> <p>“ ‘Proceedings’ means proceedings under the Summary Proceedings Act 1957, and includes the issue of an infringement notice under section 42A of this Act.</p> <p>“(2) Proceedings for a parking offence may be taken against any one or more of the following persons;</p> <p>“(a) The person who allegedly committed the offence:</p> <p>“(b) Any person who, at the time of the alleged offence, was registered as the owner, or one 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:</p> <p>“(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)—</p>

FIRST SCHEDULE—*continued*
 CONSEQUENTIAL AMENDMENTS—*continued*

Act	Amendment
	<p>whether or not (in the case of a person referred to in paragraph (b) or paragraph (c) of this subsection) the person is an individual or was the driver, person in charge, or user of the vehicle at the time alleged offence was committed.</p> <p>“(3) This section shall have effect notwithstanding anything to the contrary in any Act or rule of law.”</p> <p>By repealing section 42A (4) (as substituted by section 7 of the Transport Amendment Act 1985), and substituting the following subsection:</p> <p>“(4) Where an infringement notice has been issued, proceedings may not be taken under the Summary Proceedings Act 1957 in respect of the alleged offence unless the infringement fee specified in the notice has not been paid to the enforcement authority within 28 days after the date on which the notice, or a copy thereof, was—</p> <p>“(a) Attached to the vehicle to which it relates; or</p> <p>“(b) Delivered personally or sent in accordance with subsection (3) (c) of this section to any person liable in respect of the alleged offence—</p> <p>whichever occurred first; and, except where a notice of denial has been given under section 21D of that Act, such proceedings may then be commenced in accordance with section 21C of that Act; notwithstanding that the infringement fee may have been paid after the expiry of that 28-day period.”</p> <p>By repealing section 42A (5) (f) and (g) (as substituted by section 7 of the Transport Amendment Act 1980), and substituting the following paragraphs:</p> <p>“(f) A summary of the provisions of subsection (4) of this section and section 21G of the Summary Proceedings Act 1957; and</p>

FIRST SCHEDULE—*continued*
 CONSEQUENTIAL AMENDMENTS—*continued*

Act	Amendment
1985, No. 120—The Criminal Justice Act 1985	<p>“(g) In the case of an alleged offence that is a parking offence, a summary of the provisions of section 42 (2) of this Act and section 21H of the Summary Proceedings Act 1957; and”</p> <p>By repealing sections 42A (7), (7A), and (8). By repealing section 25 (2). By omitting from section 25 (3) the expression “section 83 (1)”, and substituting the expression “section 81”.</p>

SECOND SCHEDULE
 REPEALS

Section 13

- 1973, No. 117—The Summary Proceedings Amendment Act 1973: Section 12 (R.S. Vol. 9, p. 742).
- 1976, No. 169—The Summary Proceedings Amendment Act 1976: Sections 7 to 11 (R.S. Vol. 9, p. 746).
- 1980, No. 84—The Summary Proceedings Amendment Act 1980: Section 9 and so much of the Schedule as relates to section 89 of the principal Act (R.S. Vol. 9, p. 750).
- 1980, No. 94—The Family Proceedings Act 1980: So much of the First Schedule as relates to the principal Act.
- 1980, No. 96—The Transport Amendment Act 1980: Sections 16, 17 (2) (b), and 18 (1), (2), (3), and (4) (R.S. Vol. 16, p. 926).
- 1985, No. 50—The Transport Amendment Act 1985: Sections 6, 7, and 8 (R.S. Vol 16, p. 946).
- 1985, No. 51—The Summary Proceedings Amendment Act 1985: Sections 2, 3 (1) and (3), and 4.
- 1985, No. 120—The Criminal Justice Act 1985: So much of the First Schedule as relates to sections 100, 102, 104, and 105 of the principal Act.