

1956/164



THE JUSTICES OF THE PEACE REGULATIONS 1956

C. W. M. NORRIE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 8th day of October 1956

Present:

THE RIGHT HON. S. G. HOLLAND PRESIDING IN COUNCIL

PURSUANT to the Justices of the Peace Act 1927, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

REGULATIONS

1. These regulations may be cited as the Justices of the Peace Regulations 1956.

2. In these regulations, unless the context otherwise requires,—

“Court of hearing” means the Magistrate’s Court in which proceedings under Part II or Part IV of the Justices of the Peace Act 1927 are pending:

“Defendant” includes accused:

“Examining Court” means the Magistrate’s Court before which evidence is to be taken; and includes an examining Registrar:

“Examining Registrar” means a Registrar before whom evidence is ordered to be taken:

“Informant” includes prosecutor.

3. (1) Where under section 71A or section 155A of the Justices of the Peace Act 1927 an application is made to a Magistrate before the hearing for the taking of evidence at another Court, the application shall be in form 1 in the Schedule hereto, and shall be filed in duplicate in the Court of hearing.

(2) The Registrar of the Court of hearing shall send a copy of the application to the informant, or, where the informant has taken the proceedings in his capacity as an officer or employee of any Government Department, local authority, or public body, to the office of the Department, local authority, or public body, as the case may be, in or nearest to the place where the Court of hearing is situated:

Provided that where the informant is represented in the proceedings by a solicitor, the copy may be sent by the Registrar to that solicitor.

4. (1) If a Magistrate is satisfied that the informant does not oppose the application he may make an order on the application forthwith.

(2) In any case where the Magistrate does not make an order under subclause (1) of this regulation, the Registrar of the Court of hearing shall—

- (a) Fix a time for the hearing of the application and notify the parties to attend; or
- (b) Place the application before the Court at the hearing of the information.

5. An order for the taking of evidence at another Court shall be in form 2 in the Schedule hereto.

6. The order and a certified copy of the relevant information shall be sent by the Registrar of the Court of hearing to the Registrar of the examining Court.

7. (1) Immediately upon receiving the order, the Registrar of the examining Court shall appoint a time and place for the examination and shall give notice, in form 3 in the Schedule hereto, to the informant and to the defendant of the time and place so appointed.

(2) The notice shall be served in the same manner as if it were a summons to a defendant on an information:

Provided that—

- (a) The notice may be served on the defendant by leaving it at or posting it to his address for service as stated in the order:
- (b) Where the informant is an officer of any Government Department, local authority, or public body, the notice may be served on the informant by leaving it at or posting it to the office of the Department, local authority, or public body, as the case may be, in or nearest to the place where the Court of hearing or the examining Court is situated:

Provided also that where the informant or the defendant is represented in the proceedings by a solicitor, it shall be sufficient compliance with this regulation if the notice is left with or posted to that solicitor.

(3) The Registrar of the examining Court shall send a copy of the notice to the Registrar of the Court of hearing.

8. For the purposes of the examination, summonses to witnesses may be issued by any Justice or any Registrar of a Magistrate's Court, and the procedure in respect thereof and on the examination shall be the same in all respects as if the examination were the hearing of an information.

9. (1) The room in which the examination is held shall be deemed to be an open or public Court to which the public generally may have access so far as it can conveniently contain them:

Provided that where the proceedings to which the examination relates are being dealt with under Part IV of the Justices of the Peace Act 1927 (which relates to indictable offences) the provisions of section 143 of that Act shall apply, with all necessary modifications, to the room in which the examination is held.

(2) The examination may be adjourned from time to time and from place to place.

(3) The examining Court may administer an oath to each witness, who may be examined, cross-examined, and re-examined as at the hearing of an information.

(4) The deposition shall be taken down in writing—

(a) In the presence of the examining Court; and

(b) Not ordinarily by question and answer, but so as to represent as nearly as may be practicable the statements of the witness.

(5) The examining Court may put down or cause to be put down any particular question or answer if there appears to be any special reason for doing so, and may put any question to the witness as to the meaning of any answer or as to any matter arising in the course of the examination.

(6) An examining Registrar shall not have power to decide upon the admissibility of any evidence, but if any evidence is objected to he shall take down the question and the answer thereto or admit the document, as the case may be, and make a note of the objection on the deposition, and the question of admissibility shall be decided by the Court at the hearing of the information.

(7) If the witness objects to any question put to him before an examining Registrar, the question and the objection shall be taken down in the deposition, and the validity of the objection shall be decided by the Court at the hearing of the information.

(8) Where the examination is before a Registrar and any witness refuses or neglects to attend in answer to a witness summons issued under these regulations, or, having attended, refuses to be sworn or to answer any lawful question, or to produce any document that he is lawfully required to produce, the examination shall be adjourned, and the adjourned examination shall be held before a Magistrate's Court at a time and place to be appointed by the examining Registrar.

10. (1) When the examination of the witness has been concluded, the deposition shall be read over to him and each page of it shall be signed by him and by the examining Magistrate, Justices, or Registrar. If the witness refuses to sign his deposition, the examining Magistrate, Justices, or Registrar shall make a note of the refusal on the deposition, and the deposition may be tendered in evidence, notwithstanding that it is not signed by the witness.

(2) Forms 4 and 5 in the Schedule hereto shall be attached to the depositions which, together with any exhibits suitably marked, shall be sent to the Court of hearing.

11. If at the time appointed or at any adjournment thereof the defendant fails to appear, in person or by counsel, or fails to proceed with the examination, the examining Court shall forthwith send to the Court of hearing a certificate in form 6 in the Schedule hereto.

SCHEDULE

Reg. 3 (1)

FORM 1

Application to Take Evidence

..... Informant (or Prosecutor)

..... Defendant (or Accused)

I, the above-named defendant (or accused) hereby apply to the Magistrate's Court at for an order for the taking of the evidence of (myself and) [State full name, occupation, and address of any person whose evidence is desired to be taken] at the Magistrate's Court at

The grounds of my application are:

Dated at this day of 19....

..... (Solicitor for) defendant (or accused).

To the Registrar of the Magistrate's Court at

and

To the above-named informant (or prosecutor).

This application is filed by, whose address for service is at

Reg. 5

FORM 2

Order for Taking Evidence

(Title as in Form 1)

It is ordered that the evidence of (the defendant and) of, on behalf of the defendant (or accused), whose address for service is at, be taken before the Magistrate's Court (or the Registrar of the Magistrate's Court) at

(and it is further ordered that the hearing of these proceedings be adjourned to the day of 19.... at o'clock in thenoon.)

Dated at this day of 19....

..... Registrar.

To the Registrar of the Magistrate's Court at

SCHEDULE—*continued*

Reg. 7 (1)

FORM 3

Notice of Time and Place for Examination

(Title as in Form 1)

TAKE notice that day the day of 19....., at the hour of in thenoon, has been appointed as the time, and the Magistrate's Court at as the place, for the taking of the evidence of (the defendant and) of

Dated at this day of 19.....

..... Registrar.

To the above-named informant (*or* prosecutor)

and

To the above-named defendant (*or* accused)

and

To the Registrar of the Magistrate's Court at

Reg. 10 (2)

FORM 4

Evidence of Witnesses Examined at Another Court

(Title as in Form 1)

EVIDENCE of witnesses taken at the Magistrate's Court at (being the examining Court) on day the day of19..... before the undersigned—

.....
Examining Magistrate (*or* Justices
or Registrar).

..... appears for the informant (*or* prosecutor).

..... appears for the defendant (*or* accused).

(NOTE: *The depositions should be typewritten on separate sheets, which should be attached securely to this form. Commence the evidence of each witness with the words: "This deponent,, on his oath, says:"*. Each page must be signed by witness and the examining Magistrate or Justices or Registrar.)

Reg. 10 (2)

FORM 5

[*Sequel to Form 4*]

The foregoing depositions of, written on sheets of paper numbered consecutively from 1 to and now fixed together and signed by me (us), were taken and sworn before me (us) in accordance with the regulations under the Justices of the Peace Act 1927 at on this day of 19.....

.....
Examining Magistrate (*or* Justices
or Registrar).

SCHEDULE—*continued*

Reg. 11

FORM 6

Certificate of Non-appearance

(Title as in Form 1)

It is hereby certified that the order to take the evidence of (the defendant and) was called in Court this day, but the defendant (*or* accused) failed to appear (*or* to proceed with the examination).

Dated at this day of 19....

.....
Examining Magistrate (*or* Justices
or Registrar).

T. J. SHERRARD,
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 prescribe the procedure for taking the evidence of a defendant or a defence witness in a summary prosecution, or the evidence of a defence witness at the preliminary hearing of a charge of an indictable offence, at a Magistrate's Court other than the Court of hearing. The regulations are made under sections 71A and 155A of the Justices of the Peace Act 1927 (as inserted by sections 2 and 3 of the Justices of the Peace Amendment Act 1955), which provide that the defendant or the accused may apply to a Magistrate before the hearing, or to the Court at the hearing, for an order that evidence be so taken. The procedure prescribed by these regulations is similar to that prescribed for civil proceedings by the Magistrates' Courts Rules 1948.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 11 October 1956.

These regulations are administered in the Department of Justice.