

1968/183



**THE MAGISTRATES' COURTS RULES 1948, AMENDMENT
NO. 9**

ARTHUR PORRITT, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 30th day of September 1968

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Magistrates' Courts Act 1947 and the Crown Proceedings Act 1950, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

RULES

1. Title and commencement—(1) These rules may be cited as the Magistrates' Courts Rules 1948, Amendment No. 9, and shall be read together with and deemed part of the Magistrates' Courts Rules 1948* (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the 11th day of November 1968.

2. Service by registered letter—Rule 85 of the principal rules is hereby amended by adding to subclause (3) the words "and where the document is an originating process or a third-party notice or a notice in form 40 (to which is appended the Notice to Defendant) or a notice in form 97, the officer shall ensure that the document shows the date on which it is posted".

*S.R. 1948/197

Amendment No. 1: S.R. 1952/242

Amendment No. 2: S.R. 1956/81

Amendment No. 3: (*Revoked by S.R. 1961/22*)

Amendment (S.R. 1961/13): (*Revoked by S.R. 1961/22*)

Amendment No. 4: S.R. 1961/22

Amendment No. 5: S.R. 1963/64

Amendment No. 6: S.R. 1965/210

Amendment No. 7: S.R. 1967/46

Amendment No. 8: S.R. 1967/234

3. Proof of service—The principal rules are hereby amended by revoking rule 93, and substituting the following rule:

"93. (1) The service of any process or other document may be proved by an affidavit (in these rules referred to as an affidavit of service) in the form No. 23, or by an endorsement complying with section 116A of the Act, or upon oath at the hearing.

"(2) Where personal service is effected by registered letter, then, unless the contrary is shown, service shall be deemed to have been effected on the person to whom the letter is addressed at the time when the letter 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.

"(3) Nothing in this rule shall limit the provisions of subsection (3) of section 16 of the Crown Proceedings Act 1950."

4. Defended actions—The principal rules are hereby amended by inserting, after rule 113B (as inserted by rule 7 of the Magistrates' Courts Rules 1948, Amendment No. 5), the following heading and rule:

"Defended Actions"

"113c. (1) Where in an ordinary action (other than an action for recovery of land under section 32 of the Act) a defendant files in the Court office a notice of intention to defend or a counterclaim at any time before the hearing, the Registrar shall forthwith adjourn the hearing of the action *sine die* for a special fixture.

"(2) A notice of such adjournment in the form No. 26A shall be sent forthwith by the Registrar to each party to the action together with a form of application for a special fixture in the form No. 26B.

"(3) Where the hearing of an action has been adjourned under sub-clause (1) of this rule a special fixture for the hearing of that action shall be made only on the filing in the Court office of an application in the form No. 26B signed by the parties to the action:

"Provided that the Registrar may on the application of any party make a special fixture for the hearing of the action even though the application is not signed by all the parties to the action if he is satisfied that none of the other parties has given an acceptable reason for not signing the application. Where the Registrar makes a special fixture under this proviso he shall endorse the application accordingly.

"(4) The Registrar shall give not less than seven days' notice of the special fixture to each of the parties to the action in the form No. 28."

5. Setting aside Judgment or Order given where service effected by Registered Letter—The principal rules are hereby amended by inserting, after rule 227, the following heading and rule:

"Setting aside Judgment or Order where service effected by Registered Letter"

"227A. (1) Where a registered letter has been used for the service of any originating process or third-party notice in any proceedings and a Magistrate or Registrar, whether on the defendant's application or otherwise, is satisfied that the document has not been served, any judgment or order given or made by a Magistrate or Registrar against the defendant or any other party to the proceedings and any execution thereon may be set aside.

“(2) Any application under subclause (1) of this rule may be made *ex parte* either orally or in writing.

“(3) The Magistrate or Registrar may stay execution pending the hearing of the application.

“(4) Where a judgment or order is set aside pursuant to this rule the Registrar shall forthwith set a new date of hearing (where applicable) and issue and serve or cause to be served on the defendant or any other party to the proceedings a new summons, process, or third-party notice, as the case may require, bearing the same date as the original.

“(5) Notice of the setting aside of the judgment or order and of the new hearing (if any) shall be in the form No. 63 and shall be served on the plaintiff and any other party to the proceedings seven clear days before the date fixed for the new hearing.”

6. Forms substituted, revoked, and inserted—(1) The Second Schedule to the principal rules is hereby amended—

(a) By revoking forms 11, 12, 13, 14, 15, 16, and 86, and substituting forms 11, 12, 13, 14, 15, 16, and 86, set out in the First Schedule to these rules:

(b) By revoking form 20:

(c) By inserting, after form 26, the new forms 26A and 26B set out in the First Schedule to these rules.

(2) The Magistrates' Courts Rules 1948, Amendment No. 2, are hereby consequentially amended by revoking subclause (4) of rule 6 and paragraph (e) of subclause (7) of rule 12.

7. Consequential amendments—(1) The principal rules are hereby consequentially amended in the manner indicated in the Second Schedule to these rules.

(2) The Magistrates' Courts Rules 1948, Amendment No. 1, are hereby consequentially amended by revoking clauses 8 and 9.

8. Savings—(1) The amendments made by these rules shall not affect the validity of any document issued before the commencement of these rules, whether that document is served before or after the commencement of these rules, and the principal rules shall have effect in respect of any such document as if these rules (except to the extent that they enact the new rule 113c, the new subclause (2) of rule 127, and the new forms 26A and 26B) had not been made.

(2) Notwithstanding the amendments made by these rules, any form which is contained in the Second Schedule to the principal rules and which is replaced or amended by these rules may continue to be issued and used until the 1st day of January 1969 as if these rules had not been made; but, subject to subclause (1) of this rule, no such form shall be served by registered letter.

FIRST SCHEDULE

Rule 6 (1) (a), (c)

NEW FORMS 11, 12, 13, 14, 15, 16, 26A, 26B, and 86 PRESCRIBED

R. 74 (2).]

[M.C. 11.

ORDINARY SUMMONS

(General title—Form 1)

You are hereby summoned to attend at the Magistrate's Court to be held at on day, the day of 19....., at the hour of in the fore/afternoon, to answer the plaintiff's claim, the particulars of which are set out in the statement of claim annexed hereto.

Dated this day of 19.....

To the Defendant.

Deputy Registrar.

NOTICES TO DEFENDANT

(These notices should be read carefully)

If the claim is for money only and you admit the whole claim, you may, within the time mentioned below, either—

- (a) File in the office of the Court and serve on the plaintiff a confession for the full amount and the costs noted on this summons; or
- (b) Pay into Court the full amount of the claim and the costs noted on this summons—

and no further costs will be incurred.

If you dispute the whole of the claim, you should, within the time mentioned below, file in the office of the Court and serve on the plaintiff a notice of intention to defend.

If you dispute part of the claim, you may, within the time mentioned below, either—

- (a) File in the office of the Court and serve on the plaintiff a confession for the part you admit; or
- (b) Pay the part you admit into Court, and serve notice of payment into Court on the plaintiff.

You should also, within the same time, file in the office of the Court and serve on the plaintiff a notice of intention to defend in respect of the part of the claim you dispute.

If you have a counterclaim, you should, within the time mentioned below, file in the office of the Court and serve on the plaintiff a statement of such counterclaim.

	\$
Claim .....	.....
Cost of summons .....	.....
Solicitor's fee for preparing statement of claim .....	.....

FIRST SCHEDULE—continued

If you wish to take any of the steps mentioned above you should do so within seven days of service of this summons on you, inclusive of the day of service, or, where service was effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting. Where service was effected by registered letter the date of the posting of the letter appears immediately below this sentence.

[Where service is effected by registered letter the date of posting is to be inserted here.]

If you do not file a notice of intention to defend or a counterclaim, judgment may be given against you for the amount of the plaintiff's claim and his costs.

Forms of notice of intention to defend, confession, and notice of payment into Court may be obtained at any office of the Court. No fee is payable on the filing of these documents.

If you file a notice of intention to defend or a counterclaim you are not required to attend at the Court on the day named in the summons. When the action is ready for hearing the plaintiff or you, but preferably both the plaintiff and you together, should apply for a special fixture. You will then be notified of the day fixed for the hearing and you should attend at the Court on that day at the appointed time.

If you do nothing, the plaintiff may have judgment entered against you, and may proceed to enforce that judgment.

Failure to observe the time-limits mentioned in these notices may add to the costs.

This summons was sued out by, solicitor for the plaintiff, whose address for service is at the office of of Street,

[A printed form of statement of service or affidavit of service (see form 23) is to be endorsed hereon.]

The following information is printed in the left-hand margin of the form:—

The office of the Court is open to the public from to on Mondays to Fridays inclusive.

If you are in doubt, consult a solicitor or the Registrar immediately.

R. 74 (2).]

[M.C. 12

ORDINARY SUMMONS

(Where no money is claimed)

(General title—Form 1)

You are hereby summoned to attend at the Magistrate's Court to be held at on day, the day of 19....., at the hour of in the fore/afternoon, to answer the plaintiff's claim, the particulars of which are set out in the statement of claim annexed hereto.

Dated this day of 19.....

.....
Deputy Registrar.

FIRST SCHEDULE—continued

<p>To the Defendant.</p> <p style="text-align: center;">NOTICES TO DEFENDANT</p> <p>(These notices should be read carefully)</p>	<p style="text-align: center;">\$</p> <p>Cost of summons Solicitor's fee for preparing statement of claim</p>
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If you dispute the claim or have a counterclaim, you should, within seven days of service of this summons on you, inclusive of the day of service, or, where service was effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting, file in the Court and serve on the plaintiff a notice of intention to defend, or a statement of your counterclaim. Where service was effected by registered letter the date of the posting of the letter appears immediately below this sentence.

[Where service is effected by registered letter the date of posting is to be inserted here.]

If you file a notice of intention to defend or a counterclaim you are not required to attend at the Court on the day named in the summons. When the action is ready for hearing the plaintiff or you, but preferably both the plaintiff and you together, should apply for a special fixture. You will then be notified of the day fixed for the hearing and you should attend at the Court on that day at the appointed time.

Failure to observe the time-limits mentioned in these notices may add to the costs.

This summons was sued out by, solicitor for the plaintiff, whose address for service is at the office of of Street,

[A printed form of statement of service or affidavit of service (see form 23) is to be endorsed hereon.]

The following information is printed in the left-hand margin of the form:—

The office of the Court is open to the public from to on Mondays to Fridays inclusive.

If you are in doubt, consult a solicitor or the Registrar immediately.
[Not printed]

R. 74 (2).] [M.C. 13

SUMMONS FOR POSSESSION OF SPECIFIC CHATTELS
(General title—Form 1)

You are hereby summoned to attend at the Magistrate's Court to be held at onday, the day of 19....., at the hour of in the fore/afternoon, to answer the plaintiff's claim for possession of (certain chattels) or the sum of dollars, being the value thereof (and the sum of dollars as compensation for the wrongful detention thereof (or damage thereto)).

FIRST SCHEDULE—continued

Particulars of the plaintiff's claim are contained in the statement of claim annexed hereto.

Dated this day of 19.....

To the Defendant.

.....
Deputy Registrar.

NOTICES TO DEFENDANT

(These notices should be read carefully)

If you admit the whole of the plaintiff's claim, you may, within the time mentioned below, either—

- (a) Deliver possession of the chattels to the plaintiff and pay into Court the amount of his money claim (if any) and the costs noted on this summons; or
- (b) File in the office of the Court and serve on the plaintiff a confession—

	\$
Value of chattels .....	.....
Money claim (if any) .....	.....
Cost of summons .....	.....
Solicitor's fee for preparing statement of claim .....	.....

and no further costs will be incurred.

If you dispute the whole of the claim, you should, within the time mentioned below, file in the office of the Court and serve on the plaintiff a notice of intention to defend.

If you dispute part of the claim, you may, within the time mentioned below, either—

- (a) File in the office of the Court and serve on the plaintiff a confession for the part you admit; or
- (b) Deliver to the plaintiff the chattels to which you admit his claim, and pay into Court the part of his money claim (if any) you admit, and serve notice of payment into Court on the plaintiff.

You should also, within the same period, file in the office of the Court and serve on the plaintiff a notice of intention to defend in respect of the part of the claim you dispute.

If you have a counterclaim, you should, within the time mentioned below, file in the office of the Court and serve on the plaintiff a statement of such counterclaim.

If you wish to take any of the steps mentioned above you should do so within seven days of service of this summons on you, inclusive of the day of service, or, where service was effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting. Where service was effected by registered letter the date of the posting of the letter appears immediately below this sentence.

[Where service is effected by registered letter the date of posting is to be inserted here.]

If you do not file a notice of intention to defend or a counterclaim, judgment may be given against you for the plaintiff's claim, and his costs.

Forms of notice of intention to defend, confession, and notice of payment into Court may be obtained at any office of the Court. No fee is payable on the filing of these documents.

FIRST SCHEDULE—continued

If you file a notice of intention to defend or a counterclaim you are not required to attend at the Court on the day named in the summons. When the action is ready for hearing the plaintiff or you, but preferably both the plaintiff and you together, should apply for a special fixture. You will then be notified of the day fixed for the hearing and you should attend at the Court on that day at the appointed time.

If you do nothing, the plaintiff may have judgment entered against you, and may proceed to enforce that judgment.

Failure to observe the time-limits mentioned in these notices may add to the costs.

This summons was sued out by, solicitor for the plaintiff, whose address for service is at the office of of Street,

[A printed form of statement of service or affidavit of service (see form 23) is to be endorsed hereon.]

The following information is printed in the left-hand margin of the form:—

The office of the Court is open to the public from to on Mondays to Fridays inclusive.

If you are in doubt, consult a solicitor or the Registrar immediately.

R. 74(2).]

[M. C. 14

SUMMONS FOR RECOVERY OF LAND

(General title—Form 1)

You are hereby summoned to attend at the Magistrate's Court to be held at on day, the day of 19....., at the hour of in the fore/afternoon to answer the plaintiff's claim to recover situated at on the grounds stated in the statement of claim annexed hereto, and also to recover the sum of \$..... mentioned in the said statement of claim.

Dated this day of 19 .. .

To the Defendant.

.....
Deputy Registrar.

NOTICES TO DEFENDANT

(These notices should be read carefully)

If you dispute the whole or part of the claim, you should, within the time mentioned below, file in the office of the Court and serve on the plaintiff a notice of intention to defend, for which forms may be obtained at any office of the Court.

If you dispute part only of the money claim, you may pay into Court the amount admitted.

If you file a notice of intention to defend or a counterclaim you are not required to attend at the Court on the day named in the summons. When the action is ready for hearing the plaintiff

	\$
Amount due to	.....
/ /19 .	.....
(Plus Mesne	.....
profits at	.....
..... per	.....
week from that	.....
date)	.....
Cost of sum-	.....
mons	.....
Solicitor's fee	.....
for preparing	.....
statement of	.....
claim	.....

FIRST SCHEDULE—*continued*

or you, but preferably both the plaintiff and you together, should apply for a special fixture. You will then be notified of the day fixed for the hearing and you should attend at the Court on that day at the appointed time.

No fee is payable on the filing of a notice of intention to defend.

If you have a counterclaim, you should, within the time mentioned below, file in the office of the Court and serve on the plaintiff a statement of such counterclaim.

If you admit the whole or part of the claim and desire time for giving possession, you should, within the time mentioned below, send to the Registrar a confession (for which a form may be obtained from any Court office) and forward a copy of your confession to the plaintiff.

If you wish to take any of the steps mentioned above you should do so within seven days of service of this summons on you, inclusive of the day of service, or, where service was effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting. Where service was effected by registered letter the date of the posting of the letter appears immediately below this sentence.

[Where service is effected by registered letter the date of posting is to be inserted here.]

Failure to observe the time-limits mentioned in these notices may add to the costs.

Take notice that if you hold the above-mentioned premises as tenant of any person other than the plaintiff you must give notice to that person of this summons immediately it comes to your knowledge. If you fail to do so you may be liable to forfeit three years' improved or rack rent of the premises to him.

This summons was sued out by, solicitor for the plaintiff, whose address for service is at the office of of Street,

NOTE—Form 15 must be used in every action where the claim is brought under section 32 of the Act. In all other actions for recovery of land form 14 must be used.

[A printed form of statement of service or affidavit of service (see form 23) is to be endorsed hereon.]

The following information is printed in the left-hand margin of the form:—

The office of the Court is open to the public from to on Mondays to Fridays inclusive.

If you are in doubt, consult a solicitor or the Registrar immediately.

R. 74 (2).]

[M.C. 15

SUMMONS FOR RECOVERY OF LAND UNDER SECTION 32 OF THE
MAGISTRATES' COURTS ACT 1947, ON GROUND OF FORFEITURE FOR
NON-PAYMENT OF RENT

(General title—Form 1)

You are hereby summoned to attend at the Magistrate's Court to be held at on day, the day of 19....., at the hour of in the fore/afternoon, to answer the plaintiff's claim

FIRST SCHEDULE—continued

to recover, situate at, on the ground that the rent payable in respect thereof is in arrear, and to answer the plaintiff's claim for the amount of the arrears of such rent. Particulars of the claim are set out in the annexed statement of claim.

Dated this day of 19 .

.....
Deputy Registrar.

To the Defendant.

NOTICES TO DEFENDANT

(These notices should be read carefully)

If you pay into Court the amount of the claim for rent in arrear and the plaintiff's costs up to the time of payment, this action will cease. If such payment is made within the time mentioned below, and if within that time you notify the plaintiff of the payment, you will not incur any costs other than those entered on the summons.

	\$
Rent in arrear	
Cost of summons	
Solicitor's fee for preparing statement of claim	

If you dispute the claim, you should, within the time mentioned below, file in the Court and serve on the plaintiff a notice of intention to defend, for which forms may be obtained at any office of the Court.

If you wish to take any of the steps mentioned above you should do so within seven days of service of this summons on you, inclusive of the day of service, or, where service was effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting. If service was effected by registered letter the date of the posting of the letter appears immediately below this sentence.

[Where service is effected by registered letter the date of posting is to be inserted here.]

The filing of a notice of intention to defend does not relieve you from attendance at the Court on the day named in the summons.

Failure to observe the time-limits mentioned in these notices may add to the costs.

Take notice that if you hold the above-mentioned premises as the tenant of any person other than the plaintiff you must give notice to that person of this summons immediately it comes to your knowledge. If you fail to do so you may be liable to forfeit three years' improved or rack rent of the premises to him.

This summons was sued out by, solicitor for the plaintiff, whose address for service is at the office of of Street,

(NOTE.—Form 14 must be used in every action where the claim is for recovery of land on any ground other than forfeiture for non-payment of rent and for rent in arrear. Form 15 must be used in every action where the claim is brought under section 32 of the Act.)

[A printed form of statement of service or affidavit of service (see form 23) is to be endorsed hereon.]

FIRST SCHEDULE—*continued*

The following information is printed in the left-hand margin of the form:—

The office of the Court is open to the public from to on Mondays to Fridays inclusive.

If you are in doubt, consult a solicitor or the Registrar immediately.

R. 74(2).]

[M.C.16.

DEFAULT SUMMONS
(General title—Form 1)

TAKE notice that the plaintiff claims to recover from you the amount of \$..... as set out in the statement of claim annexed hereto (or the amount of \$..... (being the balance of \$.....) for [*Set out particulars of claim in accordance with Part VIII of the rules*]).

If you admit the whole claim, you may, within the time mentioned below either—

(a) File in the office of the Court and serve on the plaintiff a confession for the full amount and the costs noted on this summons; or

(b) Pay into Court the full amount of the claim and the costs noted on this summons,—

and no further costs will be incurred.

If you dispute the whole claim, you should within the time mentioned below, file in the office of the Court and serve on the plaintiff a notice of intention to defend.

If you dispute part of the claim, you may, within the time mentioned below, either—

(a) File in the office of the Court and serve on the plaintiff a confession for the part you admit; or

(b) Pay the part you admit into Court, and serve notice of payment into Court on the plaintiff.

You should also, within the same period, file in the office of the Court and serve on the plaintiff a notice of intention to defend in respect of the part of the claim you dispute.

If you have a counterclaim, you should, within the time mentioned below, file in the office of the Court and serve on the plaintiff a statement of such counterclaim.

If you wish to take any of the steps mentioned above you should do so within seven days of service of this summons on you, inclusive of the day of service, or, where service was effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting. Where service was effected by registered letter the date of the posting of the letter appears immediately below this sentence.

[Where service is effected by registered letter the date of posting is to be inserted here.]

If you do not file a notice of intention to defend or a counterclaim, the plaintiff is entitled to enter judgment for the full amount of the claim.

Forms of notice of intention to defend, confession, and notice of payment into Court may be obtained at any office of the Court.

If you file a notice of intention to defend or a counterclaim, or if you pay or confess part only of the claim and instead of entering judgment for the full amount the plaintiff requests that the action be brought on

FIRST SCHEDULE—continued

for hearing, a special fixture will need to be made for the hearing of the action. To obtain a special fixture the plaintiff or you, but preferably both the plaintiff and you together, should apply to the Registrar when the action is ready for hearing. You will then be notified of the day fixed for the hearing and you should attend at the Court on that day at the appointed time.

If you do nothing, the plaintiff may enter judgment against you for the full amount of his claim and costs and may proceed to enforce his judgment.

Dated this day of 19.....

Deputy Registrar.

TO THE DEFENDANT

Failure to observe the times mentioned in this summons may add to the costs.

This summons was sued out by, solicitor for the plaintiff, whose address for service is at the office of of Street,

[Empty rectangular box for defendant details]

Please insert name and address of Defendant in postal address form.

	\$
Claim	|
Cost of summons	|
Solicitor's fee for preparing statement of claim.	|

[A printed form of statement of service or affidavit of service (see form 23) is to be endorsed hereon.]

The following information is to be printed in the left-hand margin of the form:—

The office of the Court is open to the public from to on Mondays to Fridays inclusive.

If you are in doubt consult a solicitor or the Registrar immediately.

R. 113G (2)]

[M.C. 26A

NOTICE OF ADJOURNMENT (General Title—Form 1)

TAKE notice that the above-mentioned action, in which a Notice of Intention to Defend has been filed, has been adjourned to enable a special fixture for the hearing to be obtained. When the action is in all respects ready for hearing, an application for a special fixture in the form No. 26B (a copy of which is attached to this Notice) should be lodged with the Registrar who will allocate a date for the hearing and will give all parties not less than seven days' notice of that date. This date will be a firm fixture.

The application for a special fixture should be signed by all the parties to the action wherever possible as the Registrar is not obliged to make such a fixture unless the application is so signed.

Dated this day of 19.....

Deputy Registrar.

FIRST SCHEDULE—continued

The following information is printed in the left-hand margin of the form:

If you are in doubt, consult a solicitor or the Registrar immediately.

R. 113c (3) [M.C. 26B
APPLICATION FOR SPECIAL FIXTURE FOR HEARING OF DEFENDED ACTION
(General Title—Form 1)

We (or I) hereby apply for a special fixture for the hearing of the above-mentioned action.

The pleadings and all interlocutory and other matters have been completed. [Delete where the form is not signed by all the parties to the action.]

The estimated duration of the hearing is

We (or I) believe that the action is in all respects ready for hearing.

Dated this day of 19.....

(Solicitor for) Plaintiff.

(Solicitor for) Defendant.

To: The Registrar of the Magistrate's Court at

The special fixture is made under the authority conferred on me by the proviso to subclause (3) of rule 113c.

Deputy Registrar.

Date:/...../19.....

R. 266 (2).] [M.C. 86.

GARNISHEE SUMMONS TO SUB-DEBTOR
(Title—As in form 85)

WHEREAS the judgment creditor on the day of, 19....., obtained judgment (or an order) in the Magistrate's Court at against the judgment debtor for payment of the sum of \$....., including costs, which judgment (or order) remains unsatisfied as to the sum of \$.....

And whereas the judgment creditor has filed an affidavit stating that you are indebted to the said judgment debtor in the sum of \$.....

You are hereby summoned to attend at the Magistrate's Court to be held at on day, the day of, 19....., at the hour of in the fore/afternoon, to show cause why an order should not be made against you for the payment to the judgment creditor of the amount of the debts due and owing or accruing from you to the said judgment debtor or so much thereof as will satisfy the debt due under the said judgment (or order), and the costs entered on this summons:

And take notice that from and after the service of this summons upon you so much of the debts owing or accruing from you to the judgment debtor as will satisfy the debt due under the said judgment (or order) and the costs entered on this summons is attached to answer the said judgment (or order):

FIRST SCHEDULE—continued

And further take notice that if at any time before the date of hearing of this summons you pay to the Registrar of this Court the amount of such debts, or so much thereof as will satisfy the debt due under the said judgment (or order) and the costs entered on this summons, you will incur no further costs:

And further take notice that if you dispute the debt alleged to be due from you to the judgment debtor, you should, within seven days after service of this summons upon you, inclusive of the day of service, or, where service was effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting, file in the Court office and serve on the judgment creditor and the judgment debtor a notice that you dispute the debt claimed. Where service was effected by registered letter the date of the posting of the letter appears immediately below this sentence.

[Where service is effected by registered letter the date of posting is to be inserted here.]

Forms will be provided at any office of the Court. The filing of a notice that you dispute the debt claimed does not relieve you from attendance at the Court on the day named in the summons.

Dated this of 19.....

.....
Deputy Registrar.

To the abovenamed Sub-debtor.	\$
Amount remaining due under judgment (order):.....
Subsequent costs:.....
Cost of summons:.....
Solicitor's costs:.....
Total amount for which summons issued	<u>.....:.....</u>

NOTICES TO SUB-DEBTOR

1. Failure to act in accordance with the directions contained in this summons may add to the costs.

2. If this summons was issued for hearing in a Court other than the Court in which the judgment debtor might have commenced an action against you to recover the debt due by you to him, you are entitled to apply to the Court where this summons was issued either for the proceedings to be transferred to the Court in which the judgment debtor might have taken proceedings against you, or for the proceedings to be referred to the Registrar of that Court for inquiry and report.

This summons is issued at the instance of the judgment creditor, whose address for service is at

[A printed form of statement of service or affidavit of service (see form 23) is to be endorsed hereon.]

The following information is printed in the left-hand margin of the form:—

The office of the Court is open to the public from to on Mondays to Fridays inclusive.

If you are in doubt, consult a solicitor or the Registrar immediately.

Rule 7 (1)

SECOND SCHEDULE

CONSEQUENTIAL AMENDMENTS TO PRINCIPAL RULES

Rule Amended	Nature of Amendment
52	..... By inserting in paragraph (a), after the words "service of the summons", the words "or, if service is effected by registered letter, within fifteen days after the posting of the letter, exclusive of the day of posting,".
83	..... By inserting in subclause (1), after the words "day of service", the words "or, where service is effected by registered letter, within fifteen days after the posting of the letter, exclusive of the day of posting,".
90	..... By omitting the words "the form No. 20", and substituting the words "in writing of the date of service or the date of posting, as the case may require".
107	..... By revoking this rule (as amended by rule 8 of the Magistrates' Courts Rules 1948, Amendment No. 1), and substituting the following rule: "107. (1) Subject to the provisions of any Act and of these rules, service of a summons in an ordinary action shall be personal service in accordance with Rule 85 hereof. "(2) Subject to subclauses (3) and (4) of this rule, service shall be effected,— "(a) Not less than ten clear days before the day of hearing, except where service is effected by registered letter: "(b) Where service is effected by registered letter, by a letter posted not less than twenty-eight clear days before the day of hearing. "(3) Subject to subclause (4) of this rule, in the case of an action against the Crown, service shall be effected,— "(a) Not less than thirty-five clear days before the day of hearing, except where service is effected by registered letter: "(b) Where service is effected by registered letter, by a letter posted not less than thirty-five clear days before the day of hearing.

SECOND SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL RULES—*continued*

Rule Amended	Nature of Amendment
107— <i>contd.</i>	<p>“(4) Notwithstanding anything in subclause (2) or subclause (3) of this rule, service may be effected at any time before the day of hearing with the consent of the defendant or his solicitor, or if the plaintiff satisfies the Registrar by affidavit that the defendant is about to remove to a place more than fifty miles from the Court where the summons was issued; but in every such case the Court may, in its discretion, and on such terms as it thinks fit, adjourn the hearing.</p> <p>“(5) Where a summons in an ordinary action has been served otherwise than personally on the defendant and the Court is satisfied that it has come to the knowledge of the defendant less than ten clear days before the day of hearing, the action may proceed whether the defendant appears at the hearing or not, or the hearing may be adjourned, as the Court thinks fit.</p> <p>“(6) Where the summons in an ordinary action is served or posted less than the prescribed time before the day of hearing appointed in the summons, it shall not be necessary to issue a new summons but the Registrar shall adjourn the hearing and shall send to the parties to the action notice in writing of the new date of hearing.”</p>
109	By inserting after the word “effected” the words “, in any case where service is effected by registered letter, by a letter posted not less than fifteen clear days before the day of hearing, and in any other case,”.
112	By inserting in paragraph (a) of subclause (4), after the words “day of service”, the words “or, where service is effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting”.
113	<p>By revoking subclause (1) (as substituted by rule 9 of the Magistrates' Courts Rules 1948, Amendment No. 1), and substituting the following subclauses:</p> <p>“(1) A defendant in an ordinary action who disputes his liability for the whole or part of any claim shall serve on the plaintiff and file in the Court office a notice of intention to defend in the form No. 26.</p>

SECOND SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL RULES—*continued*

Rule Amended	Nature of Amendment
113— <i>contd.</i>	<p>“(1A) Subject to subclause (1B) of this rule, the notice shall be served and filed,—</p> <p>“(a) Within seven days after the service of the summons on the defendant (inclusive of the day of service), except where the summons was served by registered letter:</p> <p>“(b) Where the summons was served by registered letter, within twenty-one days after the posting of the letter (exclusive of the day of posting).</p> <p>“(1B) In the case of an action against the Crown, the notice shall be served and filed—</p> <p>“(a) Within twenty-eight days after the service of the summons on the Crown (inclusive of the day of service), except where the summons was served by registered letter:</p> <p>“(b) Where the summons was served by registered letter, within thirty-one days after the posting of the letter (exclusive of the day of posting).”</p> <p>By omitting from subclause (2), and also from the proviso to subclause (5), the words “subclause (1)”, and substituting in each case the words “subclause (1A) or subclause (1B)”.</p>
119	<p>By revoking subclause (1A) (as inserted by rule 10 of the Magistrates' Courts Rules 1948, Amendment No. 1), and substituting the following subclauses:</p> <p>“(1A) Subject to subclause (1B) of this rule, the counterclaim shall be served and filed—</p> <p>“(a) Within seven days after the service of the summons on the defendant (inclusive of the day of service), except where the summons was served by registered letter:</p> <p>“(b) Where the summons was served by registered letter, within twenty-one days after the posting of the letter (exclusive of the day of posting).</p> <p>“(1B) In the case of an action against the Crown, the counterclaim shall be served and filed,—</p> <p>“(a) Within twenty-eight days after the service of the summons on the Crown (inclusive of the day of service), except where the summons was served by registered letter:</p>

SECOND SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL RULES—*continued*

Rule Amended	Nature of Amendment
119— <i>contd.</i>	“(b) Where the summons was served by registered letter, within thirty-one days after the posting of the letter (exclusive of the day of posting).”
124	By inserting, after the words “day of service”, the words “or, where service is effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting.”
125	By omitting from the proviso to subclause (1) the words “said period of seven days”, and substituting the words “time so fixed”.
127	By revoking subclause (2), and substituting the following subclause: “(2) If, before judgment is entered, the defendant files in the Court office a notice of intention to defend, or a counterclaim, or if the plaintiff requests that the action be set down for hearing, the action shall be continued in all respects as an ordinary action and subclauses (3) and (4) of rule 113c shall apply as if the hearing of the action had been adjourned under subclause (1) of that rule.”
130	By inserting in paragraph (a) of subclause (1), after the words “day of service”, the words “or, where service is effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting”. By omitting from paragraph (b) of subclause (1) the words “said period of seven days” and substituting the words “period prescribed by paragraph (a) of this subclause”.
131	By inserting in subclause (1), after the words “day of service”, the words “or, where service is effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting.”
132	By inserting in subclause (1), after the words “day of service”, the words “or, where service is effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting.”

SECOND SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL RULES—*continued*

Rule Amended	Nature of Amendment
138	<p>By inserting in subclause (2), after the words "day of service," the words "or, where service is effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting,".</p> <p>By adding to subclause (2) the following proviso: "Provided that if the Crown is the defendant notice of the application shall be served and filed,— "(a) Within twenty-eight days after the service of the summons on the Crown (inclusive of the day of service), except where the summons was served by registered letter: "(b) Where the summons was served by registered letter, within thirty-one days after the posting of the letter (exclusive of the day of posting)."</p>
139	<p>By inserting in paragraph (a) of subclause (1), after the words "day of service," the words "or, where service is effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting,".</p>
179	<p>By adding to subclause (1), and also to subclause (2), the words "or, where service is effected by registered letter, not later than twenty-one days after the posting of the letter, exclusive of the day of posting".</p>
181	<p>By inserting in subclause (2), after the words "service of the summons", the words "or, where service is effected by registered letter, after the posting of the letter,".</p> <p>By inserting in subclause (2), after the words "on him", the words "or posting to him, as the case may require,".</p>
271	<p>By inserting in subclause (1) (as amended by rule 25 of the Magistrates' Courts Rules 1948, Amendment No. 1), after the words "on him", the words "inclusive of the day of service, or, where service is effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting,".</p>

SECOND SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL RULES—*continued*

Rule Amended	Nature of Amendment
286	<p>By revoking this rule, and substituting the following rule:</p> <p>“286. Every summons under the foregoing provisions of this Part shall be served in accordance with the rules for the service of ordinary summonses but, in any case where service is effected by registered letter, the letter shall be posted not less than twenty-one clear days before the day of hearing, and, in any other case, service shall be effected not less than seven clear days before that day:</p> <p>“Provided that in the case of a claim under section 93 of the Act, where the claimant has not made a deposit or given security in accordance with that section, the summons may, if the Registrar thinks fit, be served at any time before the day of hearing.”</p>
288	<p>By inserting in subclause (1), after the words “day of service”, the words “or, where service is effected by registered letter, within fifteen days after the posting of the letter, exclusive of the day of posting,”.</p>
293	<p>By adding to subclause (3) the words “or, where service is effected by registered letter, within fifteen days after the posting of the letter, exclusive of the day of posting”.</p>
296	<p>By revoking subclause (1) of this rule, and substituting the following subclause:</p> <p>“(1) An interpleader summons shall be served in accordance with the rules for the service of ordinary summonses and, in any case where service is effected by registered letter, the letter shall be posted not less than twenty-eight clear days before the day of hearing and, in any other case, service shall be effected not less than ten clear days before that day.”</p>
298	<p>By inserting, after the words “day of service”, the words “or, where service is effected by registered letter within twenty-one days after the posting of the letter, exclusive of the day of posting,”.</p>
346	<p>By inserting in subclause (1), after the words “service on him of the document”, the words “or, where service is effected by registered letter, within ten days after the posting of the letter, exclusive of the day of posting,”.</p>

SECOND SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL RULES—*continued*

Rule Amended	Nature of Amendment
<p>Second Schedule</p>	<p>By omitting from form 23 the word “true”, and also the words “and I attach hereto a receipt for such registered letter given to a Post officer and purporting to be signed by the said on the day of, 19.....”.</p> <p>By omitting from the heading to form 28 the words “In Default”, and substituting the word “To”.</p> <p>By omitting from form 30 the words “file in the office of the Court at, and serve on the plaintiff and the defendant at their respective addresses for service a notice of intention to defend, for which a form may be obtained from any office of the Court. In default of your so doing, you will be deemed to admit—”, and substituting the words “or, where service was effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting, file in the office of the Court at, and serve on the plaintiff and the defendant at their respective addresses for service a notice of intention to defend, for which a form may be obtained from any office of the Court. Where this notice was served on you by registered letter the date of the posting of the letter appears immediately below this sentence. [Where service is effected by registered letter the date of posting is to be inserted here.] “In default of your filing and serving a notice of intention to defend as aforesaid, you will be deemed to admit,—”.</p> <p>By omitting the Notice to Defendant on form 40, and substituting the following notice: “Notice to Defendant If you dispute the claim, or if you have a counterclaim, you should, within seven days of service of this notice on you, inclusive of the day of service, or, where service is effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting, file in the office of the Court and serve on the plaintiff a notice of intention to defend or a statement of such counterclaim. Where service was effected by registered letter the date of the posting of the letter appears immediately below this sentence.</p>

SECOND SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL RULES—*continued*

Rule amended	Nature of Amendment
Second Schedule — <i>contd.</i>	<p>[Where service is effected by registered letter the date of posting is to be inserted here.]</p> <p>“The filing of a notice of intention to defend or a statement of counterclaim does not relieve you from attendance at the Court on the day named in the notice. Delay in filing may add to the costs.”</p> <p>By omitting from the <i>Endorsement</i> on form 46 the words “and I attach hereto a receipt for such registered letter given to a Post officer and purporting to be signed by the said”.</p> <p>By omitting from form 87 paragraph 2 of the Note.</p> <p>By omitting from form 93 the paragraph beginning with the words “And take notice” and ending with the words “the Court”, and substituting the following paragraphs:</p> <p>“And take notice that you are hereby required within five days after service of this summons upon you, inclusive of the day of service, or, where service was effected by registered letter, within fifteen days after the posting of the letter, exclusive of the day of posting, (<i>or, if the time for service has been abridged, within such reasonable time before the date of hearing as the time of service permits</i>) to file in the Court office and serve on the execution creditor particulars of the goods (<i>or proceeds, or value</i>) claimed by you (<i>or the amount of the rent claimed by you and of the period for which and the premises out of which you claim that such rent issues</i>), and of the grounds of your claim; and in such particulars you must state fully your name, address, and occupation.</p> <p>“Where this summons was served by registered letter the date of the posting of the letter to you appears immediately below this sentence.</p> <p>[Where service is effected by registered letter the date of posting is to be inserted here.]</p> <p>“And take notice that in the event of your not giving such particulars as aforesaid your claim may not be heard by the Court.”</p> <p>By omitting from form 95 the paragraph beginning with the words “And take notice that you” and ending with the words “and occupation”, and substituting the following paragraph:</p> <p>“And take notice that you are hereby required within five days after the service of this summons</p>

SECOND SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL RULES—*continued*

Rule amended	Nature of Amendment
Second Schedule — <i>contd.</i>	<p>on you, inclusive of the day of service, or where service was effected by registered letter, within fifteen days after the posting of the letter, exclusive of the day of posting, (<i>or, if the time for service has been abridged, within such reasonable time before the date of hearing as the time of service permits</i>) to file in the Court office and serve on the execution creditor particulars of the goods (<i>or proceeds or value</i>) claimed by you and of the grounds of your claim, and you must also state in such particulars the amount of damages you claim, and the party from whom you claim the same, and the grounds of your claim; and in such particulars you must state fully your name, address, and occupation.</p> <p>“Where this summons was served by registered letter the date of the posting of the letter to you appears immediately below this sentence: <i>[Where service is effected by registered letter the date of posting is to be inserted here.]</i>”</p> <p>By omitting from form 96 the paragraph beginning with the word “NOTICE”, and substituting the following paragraph: “NOTICE—You are required within seven days after service of this summons on you, inclusive of the day of service, or, where service was effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting, to serve on the plaintiff and on the defendant and file in the Court office either a notice that you make no claim, or particulars stating the grounds of your claim to the subject-matter of the action. Where service was effected by registered letter the date of the posting of the letter to you appears immediately below this sentence. <i>[Where service is effected by registered letter the date of posting is to be inserted here.]</i>”</p> <p>By omitting from form 97 the paragraph beginning with the word “NOTICE”, and substituting the following paragraph: “NOTICE—The claimant is required within seven days after service of the said summons upon him, inclusive of the day of service, or, where service was effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the</p>

SECOND SCHEDULE—*continued*CONSEQUENTIAL AMENDMENTS TO PRINCIPAL RULES—*continued*

Rule amended	Nature of Amendment
Second Schedule — <i>contd.</i>	<p>day of posting, to file in the Court office and to serve upon you and upon the defendant, either a notice that he makes no claim, or particulars stating the grounds of his claim to the subject-matter in the action.”</p> <p>By omitting from form 98 the paragraph beginning with the word “NOTICE”, and substituting the following paragraph:</p> <p>“NOTICE—You are each required within seven days of the service of this summons on you, inclusive of the day of service, or, where service was effected by registered letter, within twenty-one days after the posting of the letter, exclusive of the day of posting, to file in the Court office and serve on the other parties named in the summons either a notice that you make no claim, or particulars stating the grounds of your claim. Where this summons was served by registered letter, the date of the posting of the letter to you appears immediately below this sentence. [Where service is effected by registered letter the date of posting is to be inserted here.]”.</p>

P. J. BROOKS,
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 11 November 1968, amend the Magistrates' Courts Rules 1948 so that an A.R. card will no longer be required as proof of service where a document is served by registered letter. Defendants served by registered letter are given additional time within which to take the steps necessary to protect their interests and this has involved extensive consequential amendments to the principal rules and to the forms contained in the Second Schedule thereto.

In addition rule 4 of these rules inserts a new rule 113c in the principal rules. This new rule prescribes a new procedure for obtaining fixtures for defended actions (other than actions for the recovery of land under section 32 of the Act) which is similar to the procedure at present used in the Supreme Court.

Several amendments of a tidying-up nature are also made.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 3 October 1968.

These rules are administered in the Justice Department.