

SUMMARY PROCEEDINGS AMENDMENT BILL (NO. 3)

AS REPORTED FROM THE COMMITTEE OF THE
WHOLE HOUSE

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous)

Subject to this Act,

Text struck out unanimously

New (Unanimous)

Subject to this Act,

Text inserted unanimously

~~(Subject to this Act,)~~

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

AS REPORTED FROM THE COMMITTEE OF THE WHOLE HOUSE

~~(Subject to this Act,)~~

Words struck out

Subject to this Act,

Words inserted

Hon Wyatt Creech

SUMMARY PROCEEDINGS AMENDMENT (NO. 3)

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SCHEDULE

Amendments to Other Enactments

A BILL INTITLED

An Act to amend the Summary Proceedings Act 1957

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

5 **1. Short Title and commencement**—(1) This Act may be cited as the Summary Proceedings Amendment Act (No. 3) 1997,

and is part of the Summary Proceedings Act 1957* (“the principal Act”).

Struck Out (Unanimous)

(2) This Act comes into force on the 28th day after the date on which it receives the Royal assent.

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New (Unanimous)

(2) This Act comes into force on **1 November 1998**.

2. Interpretation—Section 2(1) of the principal Act is amended by inserting, after the definition of the term “adjudged”, the following definitions:

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“‘Bank’—

“(a) Means—

“(i) A person carrying on in New Zealand the business of banking; and

“(ii) A credit union within the meaning of the Friendly Societies and Credit Unions Act 1982; and

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“(iii) A building society within the meaning of the Building Societies Act 1965; but

“(b) Does not include the Reserve Bank of New Zealand established under the Reserve Bank of New Zealand Act 1989 (except in relation to an account maintained by that bank for an employee of the bank):

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“‘Benefit’—

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“(a) Means a benefit within the meaning of Part I of the Social Security Act 1964; but

“(b) Does not include—

“(i) An orphan’s benefit payable under section 28 of the Social Security Act 1964; or

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“(ii) An unsupported child’s benefit payable under section 29 of that Act; or

“(iii) A ~~((handicapped child’s))~~ child disability allowance payable under section 39A of that Act; or

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

Amendments: 1982, Nos. 47, 131, 158; 1985, Nos. 51, 55, 162, 191; 1986, Nos. 73, 76; 1987, Nos. 165, 172; 1989, Nos. 21, 105; 1991, Nos. 62, 105; 1992, No. 82; 1993, No. 47; 1994, No. 161; 1995, Nos. 64, 87; 1996, Nos. 66, 146

“(iv) A special benefit fixed under section 61G of that Act; or

“(v) A disability allowance payable under section 69C of that Act.”.

5 **3. Summary procedure for infringement offences—**
(1) Section 21 of the principal Act (as substituted by section 5 of the Summary Proceedings Amendment Act 1987) is amended by inserting, after subsection (3), the following subsections:

“**(3A)** If—

10 “(a) The informant has not filed in a Court a copy of a reminder notice under subsection (3); and

 “(b) The informant has instituted the necessary management and accounting systems to allow the defendant to pay the infringement fee to the informant by instalments,—

15 the informant may, but is not required to, enter into an arrangement allowing the defendant to pay the infringement fee to the informant by instalments.

 “**(3B)** An arrangement under **subsection (3A)** must—

20 “(a) Be entered into before the close of the date that is 6 months from the time when the infringement offence is alleged to have been committed; and

 “(b) Be completed before the close of the date that is 12 months from the time when the infringement offence is alleged to have been committed.

25 “**(3C)** If the informant has entered into an arrangement under **subsection (3A)**, and default is made in the payment of any instalment, the informant may,—

30 “(a) Despite **subsection (3B) (a)**, enter into another arrangement under **subsection (3A)** allowing the defendant to pay the infringement fee to the informant by instalments; or

 “(b) Serve on the defendant or 1 of the defendants served with the infringement notice, or a copy of the infringement notice, a reminder notice in the prescribed form containing the same or substantially the same particulars as the infringement notice.

35 “**(3D)** If—

40 “(a) A reminder notice has been served under **subsection (3C) (b)**; and

 “(b) On the expiration of 28 days from the date of service of that notice, the infringement fee for the infringement offence has not been paid to the informant at the address specified in the notice,—

the informant may file in a Court a copy of the reminder notice, being a copy that has recorded on it the date and method of service on the defendant of the infringement notice, or copy of the infringement notice, and the date and method of service of the reminder notice, and the amount of the infringement fee then remaining unpaid.” 5

(2) Section 21 of the principal Act (as so substituted) is amended by inserting, after subsection (5), the following subsections:

“(5A) If a copy of a reminder notice is filed in a Court under **subsection (3b)** within 12 months from the time when the infringement offence is alleged to have been committed, an order is taken as having been made, as if on the determination of an information in respect of the offence, that the defendant pay a fine equal to the amount of the infringement fee then remaining unpaid for the offence together with costs of the prescribed amount. 10 15

“(5B) If the informant has entered into an arrangement under **subsection (3A) or subsection (3c) (a)**, (*and default is made in the payment of any instalment,*) no defendant may give notice requesting a hearing in respect of the infringement offence to which the arrangement applies.” 20

(3) Section 21 of the principal Act (as so substituted) is amended by adding the following subsection:

“(13) If the informant has entered into an arrangement under **subsection (3A) or subsection (3c) (a)**, and default is 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.” 25

4. Withdrawal of warrant—Section 23 of the principal Act is amended by adding, as subsection (2), the following subsection: 30

“(2) A Registrar may withdraw a warrant to arrest a defendant or a warrant for the appearance of a person required as a witness, whether or not the warrant was issued by the Registrar, if— 35

“(a) The warrant has not been executed; and

“(b) The defendant or person (as the case may be) has appeared before the Court on the matter for which the warrant was issued.” 40

5. Withdrawal of information by informant—Section 36 of the principal Act is amended by inserting, after subsection (1A) (as inserted by section 3 of the Summary Proceedings Amendment Act 1995), the following subsection:

5 “(1B) A Registrar may exercise the power conferred by section 140 of the Criminal Justice Act 1985 (which relates to orders prohibiting the publication of names) to make an order that has permanent effect if—

“(a) The Registrar grants leave under subsection (1A); and

10 “(b) The informant agrees to the making of that order.”

6. Registrar may receive not guilty pleas—The principal Act is amended by inserting, after section 41, the following section:

15 “41A. (1) Before a charge under this Part is gone into, a Registrar may receive and record a not guilty plea in respect of any person charged with an offence if—

20 “(a) The defendant is represented by a barrister or solicitor, and the barrister or solicitor notifies the Registrar, on the defendant’s behalf, that the defendant pleads not guilty to the offence; or

“(b) The defendant is not represented by a barrister or solicitor, and notifies the Registrar that he or she pleads not guilty to the offence.

25 “(2) Before a Registrar receives and records a not guilty plea under **subsection (1) (b)**, the Registrar must be satisfied that—

“(a) The defendant has been informed of the substance of the charge; and

“(b) The defendant—

30 “(i) Has been informed of his or her rights to legal representation, including the right to apply for criminal legal aid under Part I of the Legal Services Act 1991; and

“(ii) Has fully understood those rights; and

35 “(iii) Has had the opportunity to exercise those rights and has refused or failed to exercise those rights, or has engaged a barrister or solicitor to represent him or her and has subsequently terminated the engagement.

40 “(3) If a Registrar receives and records a not guilty plea under **subsection (1)**, the Court has the same power to deal with the defendant as if he or she had appeared before it and pleaded not guilty.”

7. Registrar may prohibit publication of names—The principal Act is amended by inserting, after *(section 46)* section 46, the following section:

“46A. (1) A Registrar may exercise the power conferred by section 140 of the Criminal Justice Act 1985 (which relates to orders prohibiting the publication of names) to make an order that has effect for a limited period if—

“(a) The Registrar either—

“(i) Adjourns the hearing of any charge under section 45A; or

“(ii) Grants a defendant bail under *(section 46 (1A))* section 46 (2); or

“(iii) Remands the defendant in custody under *(section 46 (1B))* section 46 (3); and

Struck Out (Unanimous)

“(b) The informant agrees to the making of that order.

New (Unanimous)

“(b) Either,—

“(i) Where the defendant asks for the making of the order, the informant agrees to that order being made; or

“(ii) Where the informant asks for the making of the order, the defendant agrees to that order being made.

“(2) If a Registrar makes an order under section 140 of the Criminal Justice Act 1985, the order may have effect for a limited period of up to ~~(21 days)~~ 28 days from the date on which the order is made.

“(3) No Registrar may exercise the power under **subsection (1)** more than once in relation to any particular information.”

8. Variation of conditions of bail—*(Section 50A (1A) of the principal Act (as inserted by section 8 of the Summary Proceedings Amendment Act 1995))* Section 50A (2) is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) The offence with which the defendant has been charged—

“(i) Is not punishable by imprisonment; or

“(ii) Is punishable by a term of imprisonment of not more than 10 years.”

5 **9. Powers of Registrar to adjourn hearing or issue warrant to arrest defendant**—Section 61A of the principal Act (as inserted by section 10 of the Summary Proceedings Amendment Act 1995) is amended by repealing subsection (3), and substituting the following subsections:

“(3) Subject to **subsection (4)**, a Registrar may exercise any of the powers referred to in subsection (1) (b) if—

10 “(a) The Registrar is satisfied that the defendant was informed of the defendant’s obligation to attend at the specified time and place; and

“(b) The defendant failed to so attend.

15 “(4) A Registrar may not exercise any of the powers referred to in subsection (1) (b) if the Registrar is satisfied that the defendant failed to attend at the specified time or place because of a reasonable excuse.”

20 **10. Defendant’s right to elect trial by jury where offence punishable by more than 3 months’ imprisonment**—(1) Section 66 of the principal Act is amended by inserting, after subsection (1), the following subsection:

25 “(1A) If a Registrar receives and records an election under **section 66A (1)**, the substance of the charge need not be stated to the defendant under subsection (1).”

(2) Section 66 (2) of the principal Act is amended by inserting, after the words “subsection (7) of this section”, the words “or **section 66A (1)**”.

30 **11. Registrar may receive elections**—The principal Act is amended by inserting, after section 66, the following section:

“66A. (1) A Registrar may receive and record an election under section 66 to be tried by a jury if—

35 “(a) The defendant is represented by a barrister or solicitor, and the barrister or solicitor notifies the Registrar, on the defendant’s behalf, of the election; or

“(b) The defendant is not represented by a barrister or solicitor, and appears before the Registrar and notifies the Registrar of his or her election.

40 “(2) Before a Registrar receives and records an election under **subsection (1) (b)**, the Registrar must—

“(a) Be satisfied that the defendant has been informed of the substance of the charge; and

“(b) Be satisfied that the defendant—

“(i) Has been informed of his or her rights to legal representation, including the right to apply for criminal legal aid under Part I of the Legal Services Act 1991; and

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“(ii) Has fully understood those rights; and

“(iii) Has had the opportunity to exercise those rights and has refused or failed to exercise those rights, or has engaged a barrister or solicitor to represent him or her and has subsequently terminated the engagement; and

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“(c) Inform the defendant of the right to make an election in the manner set out in section 66 (2).

“(3) If a Registrar receives and records an election under **subsection (1)**, the Court has the same power to deal with the defendant as if he or she had appeared before it and made his or her election.”

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12. Conduct of hearing—Section 67 of the principal Act is amended by inserting, after subsection (1), the following subsection:

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“(1A) If a Registrar receives and records a not guilty plea under **section 41A (1)**, the substance of the charge need not be stated to the defendant under subsection (1).”

13. District Court Judge or Justice or Registrar may grant a rehearing—(1) Section 75 of the principal Act is amended by inserting, before subsection (1A), the following subsection:

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“(1AA) If, on the hearing of any information or complaint, the defendant has been convicted or, as the case may be, an order has been made against the defendant, a Registrar may, if the informant does not object, grant a rehearing of the information or complaint, either as to the whole matter or only as to the sentence or order (as the case may be) and on such terms as the Registrar thinks fit.”

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(2) Section 75 (3) of the principal Act is amended by inserting, after the word “Justices”, the words “or Registrar”.

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14. Interpretation—Section 79 of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987 and amended by section 11 of the Summary Proceedings Amendment Act 1995) is amended by adding to the definition of the term “salary or wages”, the following paragraphs:

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- “(c) A bonus or an incentive payment:
- “(d) A payment of commission:
- “(e) A payment in consideration of work performed under a contract for services:
- “(f) A benefit.”

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15. Order for immediate payment of fine—Section 83 (2) of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987 and amended by section 13 of the Summary Proceedings Amendment Act 1993) is amended by adding to paragraph (b) the expression “; or”, and also by adding the following paragraph:

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- “(c) Direct that the Registrar issue a deduction notice requiring a bank to deduct the amount due from a sum payable or to become payable to the defendant.”

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New (Unanimous)

15A. Notice of fine—Section 84 (2) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:

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- “(e) That a Registrar or bailiff may enter into an arrangement with the defendant for an extension of time to pay, whether by instalments or otherwise:”.

15B. Further notice of fine—(1) Section 85 (1) (b) of the principal Act is amended by omitting the words “or section 86”.

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(2) Section 85 (1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

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- “(c) No arrangement has been entered into under **section 86 or section 86A**; and”.

(3) Section 85 (2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

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- “(b) Notify the defendant that if the fine is not paid within 28 days after the day on which it was imposed, and no arrangement has been entered into under **section 86 or section 86A**, enforcement action may then be commenced by—

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- “(i) An order to seize property; or
- “(ii) An attachment order; or

New (Unanimous)

“(iii) A deduction notice,—
and must set out in general terms the meaning and
effects of those orders and that notice:”.

Struck Out (Unanimous)

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16. Extension of time to pay—(1) Section 86 of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is amended by repealing subsection (2).

(2) Section 86 (3) of the principal Act (as so substituted) is amended by omitting the words “12 months from the day on which the fine was imposed”, and substituting the words “18 months after the date on which the order is made under this subsection”.

New (Unanimous)

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16. Extension of time to pay—The principal Act is amended by repealing section 86, and substituting the following section:

“86. (1) If a fine is payable and is not subject to an order for immediate payment, the Registrar may enter into an arrangement with a defendant providing for either or both of the following: 20

“(a) Allowing a greater time for payment:

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

“(2) If the Registrar enters into an arrangement under subsection (1), the period for which the fine remains unpaid must not exceed 18 months after the date on which the arrangement is entered into. 25

“(3) Before the Registrar enters into an arrangement under subsection (1), the Registrar may consider any information received from any source about the defendant’s financial position. 30

New (Unanimous)

5 “(4) If a fine may be paid by instalments and default is 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.”

17. Bailiff may arrange extension of time to pay—The principal Act is amended by inserting, after section 86, the following section:

“86A.

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Struck Out (Unanimous)

(1) A defendant may apply to a bailiff for extension of time to pay a fine that is not subject to an order for immediate payment.

15 “(2) The bailiff may, on an application under this section, enter into an arrangement with the defendant providing for either or both of the following:

“(a) Allowing a greater time for payment:

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

New (Unanimous)

20 (1) If a fine is payable and is not subject to an order for immediate payment, a bailiff may enter into an arrangement with a defendant providing for either or both of the following:

25 “(a) Allowing a greater time for payment:

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

“**(3)** If a bailiff enters into an arrangement under subsection (2),—

30 “(a) The period for which the fine remains unpaid must not exceed 18 months after the date on which the arrangement is entered into; and

“(b) The bailiff must, as soon as practicable, notify the Registrar of that arrangement.

35 “(4) When the Registrar is notified of an arrangement, the Registrar may, after taking into account any information received from any source about the defendant’s financial

position, cancel the arrangement within 7 days after being notified of that arrangement.

“(5) If a Registrar does not cancel an arrangement,—

“(a) The arrangement comes into force 8 days after the Registrar was notified of that arrangement; and 5

“(b) The defendant may make payments under the arrangement.

“(6) **Subsection (5) (b)** does not prevent the defendant from making payments in respect of a fine if those payments are not part of the arrangement entered into under **subsection (2)**. 10

Struck Out (Unanimous)

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

“(8) If a fine may be paid by instalments and default is 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.”

18. Action where fine not paid—Section 87 (1) of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is amended by adding to paragraph (b) the expression “; or”, and also by adding the following paragraph: 20

“(c) Issue a deduction notice requiring a bank to deduct the amount due from a sum payable or to become payable to the defendant.” 25

19. Power to obtain information in respect of beneficiaries—The principal Act is amended by inserting, before section 87A (as inserted by section 12 of the Summary Proceedings Amendment Act 1995), the following section: 30

“87AA. (1) If—

“(a) The Registrar is—

“(i) Considering whether to make an attachment order under section 87 (1) (b) in respect of salary or wages payable or to become payable to a defendant; 35
or

“(ii) Assessing the amount of the protected earnings rate referred to in section 105 (3); and

“(b) The salary or wages of the defendant includes a benefit; and

5 “(c) The Registrar wishes to verify information supplied by the defendant in respect of that benefit, or obtain information relating to the defendant in respect of that benefit, or obtain and verify that information,—

the Registrar may, by notice in writing, require the Director-General of Social Welfare to provide the Registrar with the
10 information specified in **subsection (2)** that is known to the Director-General of Social Welfare.

“(2) The information referred to in **subsection (1)** is—

“(a) The amount of any benefit that is paid to the defendant:

15 “(b) The amount of any attachment order or deduction notice that applies to the defendant and is made or given or issued under any of the following Acts:

“(i) The Social Security Act 1964:

“(ii) The Family Proceedings Act 1980:

20 “(iii) The Child Support Act 1991:

“(iv) The Tax Administration Act 1994:

“(c) Any amount that is being recovered from the defendant under section 86 of the Social Security Act 1964:

25 “(d) The composition of the defendant’s family, including the number of family members who are dependant on the defendant.

“(3) The Director-General of Social Welfare must comply with any request under **subsection (1)**—

“(a) Within a reasonable period; and

“(b) In the manner specified in the notice; and

30 “(c) Without imposing a charge.

“(4) This section does not apply if the Registrar is directed under section 88 (3) (a) to issue a warrant to seize property or to make an attachment order or to issue a deduction notice.”

New (Unanimous)

35 **19A. Publication of name of fines defaulter**—
Section 87A (1) (d) is amended by inserting, after the expression “section 86”, the expression “**or section 86A**”.

40 **20. New sections inserted**—The principal Act is amended by inserting, after section 87A (as so inserted), the following sections:

“87B. **Deduction of fines**—(1) If—

Struck Out (Unanimous)

“(a) A fine is payable by a defendant and the defendant is, by virtue of an order made under section 81 (1) or section 83 (1) or section 86 (3) or an arrangement made under **section 86A** or a direction given under **section 88 (3) (fb)**, ordered to pay the fine immediately or allowed a greater time for payment or allowed to make payment by instalments; and 5

“(b) The order or arrangement or direction has not been complied with,— 10

New (Unanimous)

“(a) A fine is payable by a defendant and the defendant is, by virtue of an order made under section 81 (1) or section 83 (1) or an arrangement made under **section 86 or section 86A** or a direction given under **section 88 (3) (fb)**, ordered to pay the fine immediately or allowed a greater time for payment or allowed to make payment by instalments; and 15

“(b) The defendant either— 20

“(i) Fails to comply with the order or arrangement or direction; or

“(ii) Refuses, without reasonable excuse, to enter into such an arrangement,—

the Registrar may issue, in writing, a deduction notice requiring a bank to deduct the amount due from a sum that is payable or becomes payable to the defendant, until the deduction notice is revoked in accordance with **section 87C** or discharged under **section 87G**. 25

“(2) The Registrar must specify in the deduction notice— 30

“(a) Whether the deduction is to be made as a lump sum or by instalments; and

“(b) The time or times by which the bank must pay the amounts deducted to the Registrar; and

“(c) The date on which the deduction notice takes effect, which date is not earlier than the date on which it was issued. 35

“(3) The Registrar must issue a copy of the deduction notice to the defendant at his or her usual or last known place of residence or business.

5 “(4) Every bank to which a deduction notice is issued must, on request, issue to the defendant a statement in writing of any amount deducted, and of the purpose for which the deduction was made.

10 “(5) If any question arises in any case as to the priority to be accorded to deduction notices issued under this section, the following have priority over those deduction notices:

“(a) One or more attachment orders or deduction notices made or given or issued under any of the following Acts:

15 “(i) The Social Security Act 1964:

“(ii) The Family Proceedings Act 1980:

“(iii) The Child Support Act 1991:

“(iv) The Tax Administration Act 1994:

“(b) The recovery of payments under section 86 of the Social Security Act 1964.

20 “(6) Every deduction notice is subject to **section 87H**.

“**87C. Revocation of deduction notices**—(1) The Registrar may revoke a deduction notice at any time by giving notice in writing to the bank to which the deduction notice was issued, or by issuing a new deduction notice.

25 “(2) At the request of the defendant, the Registrar must, in the manner specified in **subsection (1)**, revoke the deduction notice if the Registrar is satisfied that the total amount due has been paid.

New (Unanimous)

30 “(3) Despite **subsections (1) and (2)**, a deduction notice is revoked 22 days after it has been issued to a bank if—

“(a) The deduction notice requires the deduction to be made as a lump sum; and

35 “(b) The bank has not made the required deduction within 21 days of the notice being issued because there was insufficient money held by the bank to the credit of the defendant during the 21 day period.

40 “(4) **Subsection (3)** does not prevent the Registrar from issuing a new deduction notice after a deduction notice has been revoked under that subsection in respect of the same fine.

“87D. Fine to be treated as being paid—(1) All amounts deducted in accordance with a deduction notice are to be treated as having been paid by the defendant in satisfaction of the defendant’s liability to pay the fine.

“(2) If any amounts are deducted in accordance with a deduction notice, the defendant’s liability to pay the fine is not satisfied until the total amount due has been paid. 5

“87E. Deduction notices issued on banks—(1) When a deduction notice is issued to a bank, money held by the bank to the credit of the defendant is subject to the provisions of **section 87B (1)**. 10

Struck Out (Unanimous)

“(2) While a deduction notice is in force, the amount recoverable from the defendant is held in trust for the Crown, and, without prejudice to any other remedies against the defendant or any other person, the amount held in trust for the Crown may be recovered from the bank by the Crown in any Court of competent jurisdiction. 15

“(3) If a bank makes a deduction required by a deduction notice, neither the defendant nor any other person concerned has any claim against that bank, or the Crown, in respect of that deduction. 20

Struck Out (Unanimous)

“(4) For the purposes of this section, ‘money held by the bank to the credit of the defendant’ includes interest on any money that is on deposit or deposited with a bank to the credit of the defendant, whether or not— 25

“(a) The deposit or depositing is on current account:

“(b) The money is to be at interest at a fixed term or without limitation of time: 30

“(c) The defendant has made an application to withdraw or uplift the money.

“(5) For the purposes of this section, money on deposit with a bank to the credit of the defendant includes money—

“(a) That is held in a joint bank account in the name of the defendant and 1 or more other persons; and 35

Struck Out (Unanimous)

5 “(b) That can be withdrawn from the account by or on behalf of the defendant without a signature being required at the time of that withdrawal from, or on behalf of, the other person or persons.

New (Unanimous)

10 “87EA. **Meaning of certain terms relating to banks—**
(1) For the purposes of sections 87C and 87E, money held by the bank to the credit of the defendant includes interest on any money that is on deposit or deposited with a bank to the credit of the defendant, whether or not—

“(a) The deposit or depositing is on current account:

“(b) The money is to be at interest at a fixed term or without limitation of time:

15 “(c) The defendant has made an application to withdraw or uplift the money.

“2) For the purposes of subsection (1), money on deposit or deposited with a bank to the credit of the defendant includes money—

20 “(a) That is held in a joint bank account in the name of the defendant and 1 or more other persons; and

“(b) That can be withdrawn from the account by or on behalf of the defendant without a signature being required at the time of that withdrawal from, or on behalf of, the other person or persons.

“87F. **Offences in relation to deduction notices—**A person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who, without reasonable excuse,—

30 “(a) Fails to make any deduction required by a deduction notice; or

Struck Out (Unanimous)

35 “(b) Fails, after making a deduction, to pay the amount deducted to the Registrar within the time specified in the notice; or

Struck Out (Unanimous)

“(c) Permits payment to or on behalf of any person, other than the Registrar, of any amount held in trust for the Crown under **section 87E (2)**.

New (Unanimous)

5

“(b) Fails, after making a deduction, to pay the amount deducted to the Registrar within the time specified in the notice.

“**87G. Variation or discharge of deduction notices—**
(1) If a bank to which a deduction notice is issued or a defendant considers that a deduction notice has been issued in error, or contains an error, the bank or defendant may bring the matter to the attention of the Registrar specified in the notice. 10

“(2) If the matter is not rectified to the satisfaction of that bank or defendant (as the case may be) within 5 working days after the date on which that bank or defendant brings the matter to the attention of that Registrar, the bank or defendant may apply *ex parte* to the Court for the variation or discharge of the notice. 15 20

“(3) If the Court is satisfied that an error has been made and that the notice ought to be varied or discharged, the Court may vary or discharge the notice, and make any other orders that it considers just in the circumstances.

“(4) The variation or discharge takes effect when notice of it is served on the bank or defendant (as the case may be) in accordance with **section 87I**. 25

“**87H. Penalty for late deductions—**(1) If a bank to which a deduction notice is issued fails, without reasonable excuse, to— 30

“(a) Deduct the full amount or part of the amount required by the notice; or

“(b) Pay the full amount or part of the amount required by the notice to the Registrar by the time specified in the notice,— 35

the bank is liable to pay to the Registrar a penalty calculated in accordance with **subsection (2)**.

“(2) The penalty referred to in **subsection (1)** must be calculated as follows:

“(a) On the amount in default, the greater of 10% of that amount or \$5:

5 “(b) For each additional month or part of a month during which the amount in default or any part of that amount has not been deducted or has not been paid to the Registrar, a further penalty of the greater of 2% of that amount or part of that amount or \$1.

10 “(3) If a penalty is payable by a bank under **subsection (1)**, the Registrar, in his or her discretion, may remit the whole or part of that penalty if he or she is satisfied that—

“(a) The failure to make the deduction or make the payment was due to circumstances reasonably beyond the bank’s control; or

15 “(b) In all the circumstances, the imposition of that penalty would be inequitable.

“(4) If the Registrar decides to remit the whole or part of any penalty and any amount of the penalty has been paid under this section, the Registrar may refund any excess.

20 “(5) Any amount payable to the Registrar under **subsection (1)** is a debt due to the Crown and may be recovered from the bank by the Crown in any Court of competent jurisdiction.

25 “**87I. Giving of notices**—(1) A notice given to a person under any of **sections 87B to 87H** must be given by delivering it to that person—

“(a) Personally; or

“(b) By leaving it at that person’s usual or last known place of residence or business; or

30 “(c) By posting it in an envelope addressed to that person at that place of residence or business.

“(2) If the notice is sent to the person by post, then, in the absence of evidence to the contrary,—

35 “(a) The notice must be treated as having been received by that person on the fourth day after the date on which it is posted; and

“(b) In proving the delivery of that notice, it is sufficient to prove the envelope was properly addressed and posted.”

40 **21. Action where fine remains unpaid**—(1) Section 88 of the principal Act is amended by repealing subsection (1A) (as inserted by section 13 of the Summary Proceedings

Amendment Act 1995), and substituting the following subsections:

“(1A) Without limiting any other provision of this Act, a warrant for the defendant’s arrest under subsection (1) (d) may be in the form of a computer printout of information entered by a Registrar into a computer system accessible to the Police or a bailiff, and the following provisions apply in relation to every such warrant: 5

“(a) Information about a defendant that is so entered by the Registrar may be printed out by a sworn member of the Police or a bailiff, and for all purposes constitutes a warrant for the arrest of the defendant: 10

“(b) The absence of any signature on the printout does not affect its validity as a warrant:

“(c) The warrant is valid for a period of 7 days beginning on the date of its printing, and the warrant then lapses: 15

“(d) At any time and from time to time after a warrant lapses under **paragraph (c)**,—

“(i) The Registrar may re-enter the particulars into the same computer system or enter the particulars into any other computer system available to the Police or a bailiff: 20

“(ii) A sworn member of the Police or a bailiff may obtain a further printout of the original information entered by the Registrar or obtain a printout of the re-entered information or of the information entered into the other computer system, and every such printout constitutes a fresh warrant for the arrest of the defendant. 25

“(1B) A warrant issued under this section may be executed by a sworn member of the Police or by a bailiff.” 30

(2) Section 88 (3) (a) of the principal Act is amended by omitting the word “both”, and substituting the word “more”.

(3) Section 88 (3) of the principal Act is amended by inserting, after paragraph (f), the following paragraphs: 35

Struck Out (Unanimous)

“(fa) If the fine due is \$10,000 or more, refer the matter to the Registrar with a direction that action be taken under section 96A of the District Courts Act 1947 as if the fine were an order for the payment of money and as if the Registrar had obtained the order; or 40

New (Unanimous)

5 “(fa) If the defendant has other fines due as well as the fine
that is being considered by the District Court Judge
under this section, and the total of all fines due by
the defendant is \$10,000 or more, refer the matter
to the Registrar with a direction that action be taken
under section 96A of the District Courts Act 1947 as
if the fine or fines were an order for the payment of
money and as if the Registrar had obtained the
10 order; or

“(fb) Direct that a greater time for payment of the fine be
allowed subject to such conditions as may be
directed by the Judge; or”.

15 (4) Section 88 of the principal Act is amended by repealing
subsection (4).

Struck Out (Unanimous)

20 **22. Remission of fine**—The principal Act is amended by
inserting, after section 88 (as substituted by section 14 of the
Summary Proceedings Amendment Act 1987), the following
section:

“88A. The Registrar may make an order remitting any fine
if—

“(a) The amount outstanding is \$25 or less; and

25 “(b) The fine was imposed at least 3 years before the date on
which the Registrar makes the order remitting the
fine; and

“(c) In the case of a fine that includes reparation or
compensation to another person, the Registrar
has—

30 “(i) Obtained the consent of the other person to
remit the fine; or

35 “(ii) Made reasonable efforts to find the other
person and obtain his or her consent, and has not
been able to find that other person and obtain his or
her consent.”

New (Unanimous)

22. New sections inserted—The principal Act is amended by inserting, after section 88, the following sections:

“88A. Charging orders—(1) If, under **section 88 (3) (fa)**, a District Court Judge refers a matter to the Registrar with a direction that action be taken under section 96A of the District Courts Act 1947, then, in respect of any proceedings commenced by the Registrar under that direction,—

“(a) Section 66 of the District Courts Act 1947 and rules 586 to 608 of the District Court Rules 1992 apply so far as practicable to those proceedings; and

“(b) In so far as it is not practicable for any provision of section 66 or those rules to be applied to those proceedings, the Registrar may apply to a District Court Judge for directions; and

“(c) The District Court Judge may give such directions as he or she thinks best calculated to promote the ends of justice.

“(2) If the matter is removed into the High Court, the High Court Rules apply so far as practicable to those proceedings.

“88B. Remission of fine—The Registrar may make an order remitting any fine if—

“(a) The amount outstanding is \$25 or less; and

“(b) The fine was imposed at least 3 years before the date on which the Registrar makes the order remitting the fine; and

“(c) In the case of a fine that includes reparation or compensation to another person, the Registrar has—

“(i) Obtained the consent of the other person to remit the fine; or

“(ii) Made reasonable efforts to find the other person and obtain his or her consent, and has not been able to find that person and obtain his or her consent.”

23. New sections inserted—The principal Act is amended by inserting, after section 102 (as substituted by section 14 of the Summary Proceedings Amendment Act 1987), the following sections:

5 “102A. **Resisting or obstructing Bailiffs**—(1) If any person, without reasonable excuse, resists or obstructs a bailiff while the bailiff is executing a warrant under section 88, the bailiff or any constable may take that person into custody, with or without a warrant, and bring that person before a Judge.

“ (2) The Judge may order the person to pay a fine not exceeding \$300.

10 “ (3) This section does not prevent proceedings being taken against a person under some other Act instead of under this section.

“102B. **Proceedings against Bailiffs acting under warrants**—(1) No proceeding may be commenced against a bailiff for anything done under a warrant issued under section 88, unless—

15 “(a) A demand for inspection of the warrant and for a copy of the warrant is made or left at the office of the Court by the party intending to bring the proceeding, or by his or her solicitor or agent; and

20 “(b) The demand is in writing and is signed by the person making the demand; and

“(c) The bailiff refuses or neglects to comply with the demand within 6 days after it is made.

25 “(2) If any proceeding is commenced against a bailiff where a demand referred to in **subsection (1)** has been made and not complied with, judgment must be given for the bailiff if the warrant is produced or proved at the trial even though there may be a defect of jurisdiction or other irregularity in the warrant.

30 “(3) The Registrar who issued the warrant may be joined as a defendant in the proceeding and, if the Registrar is joined and judgment is given against the Registrar, the costs to be recovered by the plaintiff against the Registrar must include the costs that the plaintiff is liable to pay to the bailiff.”

35 **24. Power to obtain information in respect of employers**—The principal Act is amended by inserting, after section 104 (as substituted by section 14 of the Summary Proceedings Amendment Act 1987), the following section:

“104A. (1) If—

40 “(a) An attachment order is being made in respect of a defendant; and

“(b) The name or address or both of the employer of the defendant are unknown or require clarification,—

a Registrar may, by notice in writing, require the Commissioner of Inland Revenue to provide the Registrar with the name or address or both of that employer.

“(2) The Commissioner of Inland Revenue must comply with any request under **subsection (1)**—

“(a) Within a reasonable period; and

“(b) In the manner specified in the notice; and

“(c) Without imposing a charge.”

25. Operation of attachment order—(1) Section 105 (3) of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is amended by inserting, after the word “amount”, the words “(“the protected earnings rate”)”.

(2) Section 105 of the principal Act (as so substituted) is amended by repealing subsections (4) and (5), and substituting the following subsections:

“(4) Every attachment order applies for a fixed period stated in the order, and must not apply for a period of more than 18 months after the date on which the order is made (*under section 87 (1) (b)*) by the Registrar.

“(5) No attachment order made under this Act may operate so that, together with—

“(a) Any attachment order or deduction notice made or given or issued under any of the following Acts, namely:

“(i) The Social Security Act 1964:

“(ii) The Family Proceedings Act 1980:

“(iii) The Child Support Act 1991:

“(iv) The Tax Administration Act 1994; or

“(b) The recovery of payments under section 86 of the Social Security Act 1964,—

the net earnings of the defendant are reduced below the protected earnings rate.

“(6) If the net earnings of the defendant were to be reduced below the protected earnings rate under **subsection (5)**, the specified amount to be deducted in an attachment order under this Act must be reduced or cancelled.

“(7) If any question arises in any case as to the priority to be accorded to attachments made under this Act, the following have priority over those attachments:

“(a) One or more attachment orders or deduction notices made or given or issued under any of the following Acts:

“(i) The Social Security Act 1964:

“(ii) The Family Proceedings Act 1980:

“(iii) The Child Support Act 1991:

“(iv) The Tax Administration Act 1994:

5 “(b) The recovery of payments under section 86 of the Social Security Act 1964.”

26. Transfer of enforcement to another District Court—The principal Act is amended by repealing section 106D (as substituted by section 14 of the Summary Proceedings Amendment Act 1987), and substituting the following section:

10 “106D. If a fine has been ordered to be paid or an order has been made by a Court or the Registrar of that Court under this Part, that fine or order (as the case may be) is enforceable in another District Court.”

27. Amendments to other enactments—The enactments
15 specified in the Schedule are amended in the manner indicated in that schedule.

Section 27

SCHEDULE

AMENDMENTS TO OTHER ENACTMENTS

Act	Amendment
1964, No. 136—The Social Security Act 1964 (R.S. Vol. 32, p. 625)	By inserting in section 126A (3) (as inserted by section 2 of the Social Security Amendment Act (No. 4) 1996), after the word “address”, the words “and telephone number”.
1993, No. 28—The Privacy Act 1993	By omitting from the Third Schedule in the second column of the item relating to the Tax Administration Act 1994, the expression “and 85”, and substituting the expression “85, and 85A ”.
1994, No. 166—The Tax Administration Act 1994	<p>By repealing paragraph (f) of section 81 (4) (as amended by section 9 (1) of the Tax Administration Amendment Act 1995), and substituting the following paragraph:</p> <p>“(f) Communicating to any person, being an officer, employee, or agent of the Department of Social Welfare or of the Accident Compensation Corporation or Accident Rehabilitation and Compensation Insurance Corporation or of the Department for Courts, any information, being information—</p> <p> “(i) Which the person is authorised by the Director-General of Social Welfare or the Managing Director of the Accident Compensation Corporation or Accident Rehabilitation and Compensation Insurance Corporation or the chief executive of the Department for Courts to receive; and</p> <p> “(ii) Which is communicated to that person for the purposes of section 82 or section 83 or section 84 or section 85 or section 85A.”.</p> <p>By adding to section 81 (4) (as so amended) the following paragraph:</p> <p>“(n) Communicating to any Registrar, in accordance with section 104A of the Summary Proceedings Act 1957, any information required under subsection (1) of that section.”</p>

SCHEDULE—*continued*

AMENDMENTS TO OTHER ENACTMENTS—*continued*

Act	Amendment
<p>1994, No. 166—The Tax Administration Act 1994—<i>continued</i></p>	<p>By inserting, after section 85, the following section:</p> <p>“85A. Disclosure of certain information in relation to fines defaulters—(1) The purpose of this section is to facilitate the exchange of information between the Inland Revenue Department and the Department for Courts for the purpose of establishing an information matching programme to enable the Department for Courts to locate any fines defaulter.</p> <p>“(2) For the purpose of this section, any authorised officer of the Department for Courts may from time to time supply to the Commissioner any fines defaulter information held by that Department.</p> <p>“(3) If, in relation to any fines defaulter, information is supplied by any authorised officer of the Department for Courts to the Commissioner, the Commissioner may compare that information with any information held by the Commissioner which relates to the fines defaulter.</p> <p>“(4) If the Commissioner has information relating to the fines defaulter, the Commissioner may supply to an authorised officer of the Department for Courts all or any of the following information that is held by the Commissioner in relation to that fines defaulter:</p> <p>“(a) The last known address of the fines defaulter; and</p> <p>“(b) If applicable, the date when that address was most recently changed; and</p> <p>“(c) The telephone number of the fines defaulter.</p> <p>“(5) The provisions of this section apply despite any other provision of this Act.</p> <p>“(6) In this section, unless the context otherwise requires,—</p>

SCHEDULE—*continued*AMENDMENTS TO OTHER ENACTMENTS—*continued*

Act	Amendment
1994, No. 166—The Tax Administration Act 1994— <i>continued</i>	<p>“ ‘Authorised officer’, in relation to the Department for Courts, means any officer, employee, or agent of that Department who is authorised by the chief executive to supply information to or receive information from the Commissioner under this section:</p> <p>“ ‘Chief executive’ means the chief executive of the Department for Courts:</p> <p>“ ‘Fines defaulter’ means any person who is in default in the payment of a fine (within the meaning of section 79 of the Summary Proceedings Act 1957):</p> <p>“ ‘Fines defaulter information’ means information that identifies the fines defaulter, which may include the fines defaulter’s name, address, and telephone number.”</p>
1995, No. 24—The Tax Administration Amendment Act 1995	By repealing section 9 (1).