

Schedule 1

[Section 109]

TRANSITIONAL PROVISIONS

1. Interpretation

In this Schedule “commencement” means the day on which this Act comes into operation.

2. Matters prescribed under *Justices Act 1902*, Part VIBA

- (1) If immediately before commencement an enactment is prescribed for the purposes of section 171BD of the *Justices Act 1902*, then on and after commencement that enactment is to be taken as being a prescribed enactment for the purposes of Part 3 until regulations are made under this Act prescribing enactments for the purposes of Part 3.
- (2) If immediately before commencement persons employed by an authority are prescribed for the purposes of section 171BE and 171BL (1) of the *Justices Act 1902*, then on and after commencement the authority is to be taken to be a prosecuting authority for the purposes of Part 3.
- (3) If immediately before commencement a person is prescribed for the purposes of section 171BE of the *Justices Act 1902* as a person who may lodge and sign an enforcement certificate in relation to a prescribed enactment, then on and after commencement the person is to be taken to be a person designated as a prosecuting officer by the authority for the purposes of section 16 in relation to that prescribed enactment.
- (4) If immediately before commencement a person is prescribed for the purposes of section 171BL (1) of the *Justices Act 1902* as a person who may withdraw proceedings under Part VIBA of that Act in respect of an offence alleged in an infringement notice issued under a prescribed enactment, then on and after commencement the person is to be taken to be a person designated as a prosecuting officer by the authority for the purposes of section 22 in relation to that prescribed enactment.

3. Infringement notices issued before commencement date

- (1) Subject to Part 3 and this clause, an infringement notice issued before commencement may be enforced under Part 3.
- (2) If immediately before commencement a courtesy letter has been served on an alleged offender under section 171BD of the *Justices Act 1902* in respect of an infringement notice but the time within which payment is to be made or notice is to be given under that

section has not elapsed, then on and after commencement Part 3 applies to the infringement notice as if the courtesy letter were a final demand issued under section 14 on the date when the courtesy letter was served on the alleged offender.

- (3) If immediately before commencement a certificate in relation to an infringement notice could be but has not been lodged under section 171BE of the *Justices Act 1902*, then on or after commencement, subject to section 16, the infringement notice may be registered under section 16 and Part 3 applies accordingly.
- (4) If immediately before commencement an enforcement order under section 171BF of the *Justices Act 1902* is in force, whether or not it has been varied under section 171BH of that Act, then on and after commencement that order continues to have effect despite the repeal of Part VIBA of that Act.
- (5) If —
 - (a) under subclause (4) an enforcement order continues to have effect on and after commencement; and
 - (b) when the time specified in that order elapses (“**the due date**”) neither payment as specified in the order (within the time required by the order or thereafter) nor an election under section 171BK of the *Justices Act 1902* has been made,then —
 - (c) if at the due date the alleged offender has reached the age of 17 years, the Registrar, under section 18, may issue a notice of intention to suspend licences to the alleged offender and Part 3 has effect accordingly, but such a notice is not to be issued until 2 months after commencement;
 - (d) if at the due date the alleged offender has not reached the age of 17 years, the Registrar is to refer the failure to make either payment or an election to the Children's Court.
- (6) On a reference to the Children's Court under subclause (5) (d), the Court may deal with the alleged offender under the *Young Offenders Act 1994* or the *Child Welfare Act 1947* (as the case may be) as if the amount outstanding under Part VIBA of the *Justices Act 1902* were a fine imposed on the alleged offender on the day the enforcement order was made, but before making any order under the *Young Offenders Act 1994* or the *Child Welfare Act 1947* in respect of the failure to pay, the Court must afford the alleged offender the opportunity to elect to have a complaint for the alleged offence dealt with by the Court.
- (7) If immediately before commencement a warrant of commitment under section 171BI of the *Justices Act 1902* could be but has not been issued, then on or after commencement, under section 18, the Registrar may issue a notice of intention to suspend licences to the

alleged offender and Part 3 applies accordingly, but such a notice is not to be issued until 2 months after commencement.

- (8) If by virtue of this clause proceedings in respect of an infringement notice issued before commencement are taken under Part 3, then any costs or fees that an offender owes under Part VIBA of the *Justices Act 1902* are to be taken to be enforcement fees for the purposes of Part 3.

4. Certain fines and orders imposed by Supreme or District Court before commencement

- (1) If before commencement the Supreme Court or the District Court imposed a fine (as defined in Part 4) on an offender and ordered that in default of payment the offender be imprisoned, then on and after commencement the order continues to have effect and the provisions of the *Justices Act 1902* relevant to that order continue in operation in respect of that order.
- (2) If before commencement the Supreme Court or the District Court made an order as to any of the matters referred to in section 56 (a) or (b), section 57 (a) or (b) or section 58 under which a person is required to pay money to the Crown and ordered that in default of payment the person liable to pay the money be imprisoned, then on and after commencement the orders continue to have effect and the provisions of the *Justices Act 1902* relevant to those orders continue in operation in respect of those orders.

5. Other fines imposed before commencement

- (1) In this clause —
 - “**default order**” means an order that accompanies an old fine and that takes effect if payment is not made as required;
 - “**old fine**” means a fine (as defined in Part 4) imposed before commencement and to which Part 4 would apply if the fine had been imposed on or after commencement, but does not include a fine to which clause 4 (1) applies.
- (2) If before commencement an order was made in respect of an old fine allowing the offender time to pay or allowing the offender to pay by instalments and, immediately before commencement, the offender is not in breach of the order, then on and after commencement the order continues to have effect.
- (3) If under subclause (2) an order in respect of an old fine continues to have effect on and after commencement and the offender subsequently defaults in payment —
 - (a) any default order is of no force or effect; and
 - (b) the court officer (as defined in Part 4) of the court that imposed the old fine may register the old fine under Part 4.

- (4) If immediately before commencement a warrant of execution or a warrant of commitment could be but has not been issued under section 155, 157 or 158 of the *Justices Act 1902* in respect of an old fine, then on or after commencement the court officer (as defined in Part 4) of the court that imposed the old fine may register the old fine under Part 4.
- (5) If immediately before commencement a warrant of execution issued under section 155 or 171BI of the *Justices Act 1902* in respect of an old fine is unexecuted, then on and after commencement the warrant ceases to have effect and the court officer (as defined in Part 4) of the court that imposed the old fine may register the old fine under Part 4.
- (6) If immediately before commencement a warrant of commitment issued under section 155, 157, 158 or 171BI of the *Justices Act 1902* in respect of an old fine is unexecuted, then on and after commencement the warrant has no force or effect and the court officer (as defined in Part 4) of the court that imposed the old fine may register the old fine under Part 4.
- (7) If under this clause an old fine is registered under Part 4, the Registrar must not issue a notice of intention to suspend licences under that Part until 2 months after commencement.

6. Fines etc. imposed by Children’s Court before commencement

To the extent necessary, provisions of the *Justices Act 1902* repealed by the *Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994* continue in operation for the purposes of any proceedings under the *Young Offenders Act 1994* or the *Child Welfare Act 1947* in relation to the non-payment of a fine or other amount.

7. Recognizances etc. forfeited before commencement

- (1) In this clause —
 - “**default order**” means an order that accompanies an old forfeiture order and that takes effect if payment is not made as required;
 - “**old forfeiture order**” means an order made before commencement as to any of the matters referred to in section 56 (a) or (b), section 57 (a) or (b) or section 58 under which a person (“**the liable person**”) is required to pay money to the Crown, but does not include an order to which clause 4 (2) applies.
- (2) If before commencement an order was made in respect of the money payable under an old forfeiture order allowing the liable person time to pay or allowing the liable person to pay by instalments and, immediately before commencement, the liable person is not in breach of the order, then on and after commencement the order continues to have effect.

- (3) If under subclause (2) an order in respect of an old forfeiture order continues to have effect on and after commencement and the liable person subsequently defaults in payment —
 - (a) any default order is of no force or effect; and
 - (b) the court officer (as defined in Part 4) of the court that made the old forfeiture order may, under Part 4, register the amount payable as if it were a fine and, subject to Part 5, Part 4 applies accordingly.
- (4) If immediately before commencement a warrant of execution or a warrant of commitment could be but has not been issued under section 155, 157 or 158 of the *Justices Act 1902* in respect of an old forfeiture order, then on or after commencement the court officer (as defined in Part 4) of the court that imposed the old forfeiture order may, under Part 4, register the amount payable as if it were a fine and, subject to Part 5, Part 4 applies accordingly.
- (5) If immediately before commencement a warrant of execution issued under section 155 of the *Justices Act 1902* in respect of an old forfeiture order is unexecuted, then on and after commencement the warrant ceases to have effect and a court officer (as defined in Part 4) of the court that imposed the old forfeiture order may, under Part 4, register the amount payable as if it were a fine and, subject to Part 5, Part 4 applies accordingly.
- (6) If immediately before commencement a warrant of commitment issued under section 155, 157 or 158 of the *Justices Act 1902* in respect of an old forfeiture order is unexecuted, then on and after commencement the warrant has no force or effect and the court officer (as defined in Part 4) of the court that imposed the old forfeiture order may, under Part 4, register the amount payable as if it were a fine and, subject to Part 5, Part 4 applies accordingly.
- (7) If under this clause an amount payable is registered under Part 4 as if it were a fine, the Registrar must not issue a notice of intention to suspend licences under that Part until 2 months after commencement.

8. **Other amounts ordered to be paid before commencement**

- (1) In this clause —

“default order” means an order that accompanies an old order and that takes effect if payment is not made as required;

“old order” means an order made before commencement by a court in connection with a criminal cause or matter, or by justices under the *Justices Act 1902*, requiring a person (**“the offender”**) to pay money, other than a fine (as defined in Part 4) (**“the sum owed”**).
- (2) If before commencement an order (**“a time to pay order”**) was made in respect of the sum owed under an old order allowing the offender

time to pay or allowing the offender to pay by instalments and, immediately before commencement, the offender is not in breach of the time to pay order, then on and after commencement the time to pay order continues to have effect.

- (3) If under subclause (2) a time to pay order continues to have effect on and after commencement and the offender subsequently breaches the order —
 - (a) any default order is of no force or effect; and
 - (b) any amount owed under the old order may be recovered as a judgment debt in a court of competent jurisdiction.
- (4) If immediately before commencement a warrant of commitment or a warrant of execution could be but has not been issued in respect of an amount owed under an old order, then on or after commencement that amount may be recovered as a judgment debt in a court of competent jurisdiction.
- (5) If immediately before commencement a warrant of commitment or a warrant of execution issued in respect of an amount owed under an old order is unexecuted, then on and after commencement the warrant ceases to have effect and that amount may be recovered as a judgment debt in a court of competent jurisdiction.
- (6) For the purposes of recovering an amount owed under an old order, the court that made the old order, on request by or on behalf a person entitled to recover the money, is to provide that person with a certified copy of the old order and that copy may be registered as a judgment in the court of competent jurisdiction.

9. **WDOs issued before commencement**

- (1) In this clause —

“amount outstanding”, in respect of a WDO issued in respect of a person in default as to the payment of a sum of money, means the amount of that sum that the person is liable to pay after taking into account the performance (if any) of the person’s obligations under the WDO;

“WDO” means a work and development order issued under Part VIAA of the *Justices Act 1902*.
- (2) If immediately before commencement a warrant of commitment could be but has not been issued under section 171AG of the *Justices Act 1902* in respect of a WDO that has been cancelled, then on or after commencement the chief executive officer referred to in that section may refer the matter in accordance with subclause (6).
- (3) If immediately before commencement a warrant of commitment issued under section 171AG of the *Justices Act 1902* in respect of a WDO that has been cancelled is unexecuted, then on and after

commencement the warrant ceases to have effect and the chief executive officer referred to in that section may refer the matter in accordance with subclause (6).

- (4) If immediately before commencement a WDO issued in respect of a person is in force, then on and after commencement the WDO continues to have effect and the provisions of the *Justices Act 1902* relevant to the WDO continue in operation in respect of that WDO, but subject to this clause.
- (5) If under subclause (4) a WDO continues to have effect on and after commencement and the WDO is subsequently cancelled under section 171AG of the *Justices Act 1902*, the chief executive officer referred to in that section may refer the matter in accordance with subclause (6).
- (6) To refer a matter in accordance with this subclause, the chief executive officer must —
 - (a) if the WDO was issued in respect of a person for the non-payment of a sum of money ordered to be paid by a court, refer the matter to the court that made the order; or
 - (b) if the WDO was issued in respect of an alleged offender for the non-payment of an amount under Part VIBA of the *Justices Act 1902* in respect of an infringement notice, refer the matter to the Registrar.
- (7) If a matter is referred under subclause (6) (a) to a court, the amount outstanding may be recovered in the same manner as if it had been ordered to be paid by the court after commencement.
- (8) If a matter is referred under subclause (6) (b) to the Registrar, the infringement notice is to be taken as having been registered under Part 3 and —
 - (a) that Part applies as if the amount outstanding were the modified penalty required to be paid under the infringement notice; and
 - (b) the Registrar may under section 18 issue a notice of intention to suspend licences.
- (9) If by virtue of this clause an amount outstanding is registered under Part 4 or an infringement notice is taken to be registered under Part 3, the Registrar must not issue a notice of intention to suspend licences under those Parts until 2 months after commencement.

10. Warrants of execution partly executed at commencement

If immediately before commencement a warrant of execution issued under the *Justices Act 1902* is partly executed, then on and after commencement the warrant continues to have effect and the

provisions of the *Justices Act 1902* relevant to the warrant and its execution continue in operation in respect of that warrant.

11. Warrants of execution issued under *Justices Act 1902*, Part VIA

If immediately before commencement a warrant of execution issued under Part VIA of the *Justices Act 1902* is unexecuted, then on and after commencement the warrant continues to have effect and the provisions of the *Justices Act 1902* relevant to the warrant and its execution continue in operation in respect of that warrant.

12. Warrants of commitment executed before commencement

If immediately before commencement a person is in custody under a warrant of commitment issued before commencement under the *Justices Act 1902* in respect of an amount of money payable, then on and after commencement the warrant continues to have effect and the provisions of the *Justices Act 1902* relevant to the warrant and its execution continue in operation in respect of that warrant.

13. Reciprocating States etc.

- (1) A State or a Territory that under Part VIA of the *Justices Act 1902* is a reciprocating State or Territory immediately before commencement is to be taken as having been prescribed to be a reciprocating State or Territory for the purposes of Part 6 of this Act until regulations are made for the purposes of that Part.
- (2) A court of a reciprocating State or Territory that under Part VIA of the *Justices Act 1902* is a reciprocating court immediately before commencement is to be taken as having been prescribed to be a reciprocating court for the purposes of Part 6 of this Act until regulations are made for the purposes of that Part.

[Schedule 1 amended by No. 8 of 1996 s.9.]