Land Transport (Offences and Penalties) Amendment Regulations (No 2) 2009

Anand Satyanand, Governor-General

Order in Council

At Wellington this 14th day of December 2009

Present:
His Excellency the Governor-General in Council

Pursuant to section 167 of the Land Transport Act 1998, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Schedule 1 3
New Schedules 4 and 4A substituted

Schedule 2 18
New Schedule 6 added

Regulations

1 Title
These regulations are the Land Transport (Offences and Penalties) Amendment Regulations (No 2) 2009.

2 Commencement
These regulations come into force on the date of their notification in the *Gazette*.

3 Principal regulations amended
These regulations amend the Land Transport (Offences and Penalties) Regulations 1999.

4 Impoundment of motor vehicles under section 96 of Act
Regulation 8 is amended by inserting "or 4A (whichever is appropriate)," after "Schedule 4".

5 New regulation 8B inserted
The following regulation is inserted after regulation 8A:

"**8B Prohibition on sale or disposal of certain motor vehicles**
A notice prohibiting the sale or disposal of a motor vehicle that is to be given to a person under section 98A of the Act must be in the form set out in Schedule 6 or a form to the same effect."

6 Schedules 4 and 4A substituted
Schedule 4 is revoked and the Schedules 4 and 4A set out in Schedule 1 of these regulations are substituted.

7 New Schedule 6 added

The Schedule 6 set out in Schedule 2 of these regulations is added.

Schedule 1

r 6

New Schedules 4 and 4A substituted

Schedule 4

r 8

Vehicle seizure and impoundment notice (illegal street racing offence/failure to stop)

Form

Form of vehicle seizure and impoundment notice (illegal street racing offence/failure to stop)

Section 96, Land Transport Act 1998

Notice No:

Part 1

Driver's full name:
Full address:
Telephone number:
Date of birth:
Occupation:
Driver licence number:

Registered person's full name:
Full address:
Date of birth:
Occupation:
Telephone number:
Driver licence number:
Date of offence:
Time of offence:
Date of seizure:

Schedule 4—*continued*
Form—*continued*

Time of seizure:

Advice to driver [or operator]

I am seizing and impounding, or seizing and authorising the impoundment of, the motor vehicle described below for 28 days because I believe, on reasonable grounds, that you drove the vehicle on a road while—

(*Tick appropriate paragraph*)

__(a) you operated that vehicle in a race, or in an unnecessary exhibition of speed or acceleration, on a road in contravention of section 22A(1) of the Land Transport Act 1998 (the **Act**).

__(b) without reasonable excuse, you operated that vehicle on a road in a manner that caused the vehicle to undergo sustained loss of traction in contravention of section 22A(3) of the Act.

__(c) you operated that vehicle in circumstances referred to in section 96(1AA) of the Act.

__(d) you failed to stop in the circumstances referred to in section 96(1AB) of the Act.

The vehicle driven [or operated] by you is seized and impounded for 28 days.

Registration number or VIN:

Make:

Model:

Vehicle year:

It is to be impounded at:

Enforcement officer ID:

Station:

Part 2 of this form outlines your rights (including an outline of the rights of appeal given to the registered person of an impounded vehicle under sections 102 and 110 of the Act).

Schedule 4—*continued*
Form—*continued*

Part 2

Outline of rights relating to impoundment of vehicle referred to in this notice

What about personal property in the vehicle?

1 Any personal property (other than property attached to or used in connection with the operation of the vehicle) will be released on request to any person who produces satisfactory evidence that he or she was lawfully entitled to possession of the vehicle or personal property immediately before the vehicle was moved. If the vehicle was carrying goods at the time of seizure and impoundment, they will be released to any person acting on behalf of the owner of the goods if the person produces satisfactory evidence of the owner's consent to the release or they will be released to a bailiff or constable executing a warrant to seize property under section 94 of the Summary Proceedings Act 1957.

Will my trailer be impounded?

2 A trailer or any other vehicle without motive power that is being towed by or is attached to a motor vehicle at the time of seizure and impoundment will not be seized or impounded.

What are my appeal rights?

3 If you are the registered person of the motor vehicle that has been seized and impounded, you may appeal against the seizure and impoundment of the vehicle. In the first instance, you may appeal to the Police; if that appeal is unsuccessful, you may then appeal to the District Court. If you decide to appeal to the Police, you must lodge your appeal with the Police within 14 days of the date on which the vehicle was seized and impounded. After that time, you may appeal to the District Court only with the agreement of the Police, who must be satisfied that exceptional circumstances exist that prevented you from appealing to the Police within the 14-day

Schedule 4—*continued*
Form—*continued*

period. These appeal rights are set out in full in sections 102 and 110 of the Act.

What are the grounds for appeal?

4 The grounds for appeal are that—

(a) the impounded vehicle was a stolen or converted vehicle at the time of the seizure and impoundment; or

(b) the enforcement officer who seized the vehicle did not believe on reasonable grounds that at the time of driving [or operating] the vehicle on a road,—

(i) if section 96(1A) of the Act applies, the operator operated the motor vehicle in a race, or in an unnecessary exhibition of speed or acceleration, in contravention of section 22A(1) of the Act; or

(ii) if section 96(1A) of the Act applies, the operator operated the motor vehicle without reasonable excuse in a manner that caused the vehicle to undergo sustained loss of traction in contravention of section 22A(3) of the Act; or

(iii) if section 96(1AA) of the Act applies, the driver operated the vehicle in a manner that breached a qualifying bylaw and the vehicle was subject to a warning notice issued under section 22AF of the Act; or

(iv) if section 96(1AB) of the Act applies, a person driving the vehicle had failed to stop as signalled, requested, or required under section 114(1) or (2) of the Act; or

(c) the enforcement officer who seized the vehicle did not comply with the notice requirements set out in section 96(2) of the Act; or

(d) if section 96(1A), (1AA), or (1AB) of the Act applies, the registered person did not know and could not reasonably have been expected to know that the operator of the vehicle would contravene section 22A(1) or (3),

Schedule 4—*continued*
Form—*continued*

22AF, or 114(1) or (2) of the Act (whichever applies); or

(e) if section 96(1A), (1AA), or (1AB) of the Act applies, the registered person took all reasonable steps to prevent the operator of the vehicle from contravening section 22A(1) or (3), 22AF, or 114(1) or (2) of the Act (whichever applies).

How do I lodge an appeal?

5 If you believe you have grounds for appealing against the impoundment of the vehicle, you should go to the Police station nearest to where the vehicle was impounded and pick up a copy of the appeal documents. The appeal must be in writing and set out in a statutory declaration. It must clearly state the grounds for the appeal. The declaration must be taken in front of someone entitled to take statutory declarations. You must lodge your appeal with the Police within 14 days of the date on which the vehicle was seized and impounded.

Who will determine my appeal?

6 The initial appeal against the impoundment of a vehicle will be determined by an enforcement officer authorised for the purpose by the Commissioner of Police.

Is there a time limit within which an appeal must be determined?

7 The officer who determines your appeal must do so as soon as is reasonably practicable and not later than 2 working days after the day of lodgement, in the case of an appeal lodged on the ground that the impounded vehicle was a stolen or converted vehicle at the time of seizure and impoundment, and not later than 5 working days after the day of lodgement, in any other case.

Schedule 4—*continued*
Form—*continued*

Results of appeal to Police

8 The officer who determines your appeal will either allow the appeal or dismiss it. He or she may refuse to consider your appeal if satisfied that the appeal is frivolous or vexatious, or that you have provided insufficient information. If your appeal is not dismissed on these grounds, the officer who considers it will allow it if satisfied that one of the grounds listed in paragraph 4 is established. If he or she is not satisfied that one of the grounds listed in paragraph 4 is established, the appeal will be dismissed.

Appeal to District Court

9 If your appeal is dismissed, you may appeal to the District Court where a District Court Judge will decide whether your appeal should be allowed. An appeal to a District Court must be made not later than 28 days after the date on which you were notified of the decision appealed against, or within such further period as the Court may allow. Requirements about the way in which the appeal is to be made and determined are specified in section 111 of the Act. The District Court must determine the appeal only on the grounds specified in the Act.

Towage and storage fees

10 The fees for towage and storage are set out in regulations. You can obtain a copy of the fees from your nearest Police station.

How do I go about paying the fees?

11 If you are liable to pay fees for towage or storage, the law, in general, requires you to pay the fees in full or enter into an arrangement with the storage provider to pay the outstanding fees over time. You can arrange to pay some or all of the fees during the period of the impoundment.

Schedule 4—*continued*
Form—*continued*

Release of vehicle

12 The storage provider must release the impounded vehicle to the registered person or a person authorised by the registered person if your appeal is successful. The storage provider must release the impounded vehicle to the registered person if the Police finally decide not to take proceedings against the person who drove the vehicle [or operated the vehicle], or if proceedings have been taken and the person is acquitted. The Act specifies other circumstances in which an impounded vehicle may be released before the close of the 28-day impoundment period. The storage provider must release the impounded vehicle to the registered person of the vehicle, or a person authorised by the registered person, on or after the close of the 28-day impoundment period if the registered person or authorised person—

(a) shows proof of identity and either proof of ownership of the vehicle or the registered person's copy of this notice; and

(b) pays the towage and storage fees and charges or enters into an arrangement with the storage provider to pay those fees and charges. (Note that a registered person may enter into an arrangement only with the agreement of the person with whom the arrangement is entered into.)

Vehicle may be seized under warrant

13 The vehicle may be seized by a bailiff or constable executing a warrant to seize property under section 94 of the Summary Proceedings Act 1957 or by a Registrar, bailiff, or constable executing a warrant of confiscation under section 132 of the Sentencing Act 2002.

Vehicle and personal property may be sold by storage provider

14 The storage provider may apply to an enforcement officer authorised by the Commissioner of Police for approval to dispose

Schedule 4—*continued*
Form—*continued*

of the impounded vehicle, and any personal property found in the vehicle, if—

(a) 10 days have elapsed since the close of the impoundment period; and

(b) the registered person of the vehicle or a person authorised by the registered person has not claimed the vehicle and has not paid the towage and storage fees and charges or entered into an arrangement to pay those fees and charges; and

(c) no other person has established to the satisfaction of the authorised officer that the person is entitled to possession of the vehicle or any personal property found in the vehicle.

Schedule 4A

r 8

Vehicle seizure and impoundment notice (alcohol and driver licence)

Form
Form of vehicle seizure and impoundment notice

Section 96, Land Transport Act 1998

Notice No:

Part 1

Driver's full name:
Full address:
Telephone number:
Date of birth:
Occupation:
Driver licence number:

Registered person's full name:
Full address:

Schedule 4A—*continued*
Form—*continued*

Date of birth:
Occupation:
Telephone number:
Driver licence number:
Date of offence:
Time of offence:
Date of seizure:
Time of seizure:

Advice to driver

I am seizing and impounding, or seizing and authorising the impoundment of, the motor vehicle described below for 28 days because I believe, on reasonable grounds, that you drove the vehicle on a road while—

(*Tick appropriate paragraph*)

__(a) you were disqualified from holding or obtaining a driver licence authorising you to drive that vehicle.

__(b) your driver licence was for the time being suspended or was revoked.

__(c) you did not hold a driver licence and you were previously forbidden to drive on [*date*] because you were unlicensed or your driver licence had expired.

__(d) you had a breath alcohol concentration exceeding 400 micrograms of alcohol per litre of breath or a blood alcohol concentration exceeding 80 milligrams of alcohol per 100 millilitres of blood, and you have been convicted of 2 or more offences against any of sections 56(1) or (2), 58(1), 60(1), and 61(1) or (2) of the Land Transport Act 1998 (the **Act**) within the last 4 years.

__(e) you failed or refused to undergo a blood test after having been required or requested to do so under section 72 or section 73 of the Act , and you have been convicted of 2 or more offences against any of sections 56(1) or (2), 58(1), 60(1), and 61(1) or (2) of the Act within the last 4 years.

Schedule 4A—*continued*
Form—*continued*

The vehicle driven by you is seized and impounded for 28 days.

Registration number or VIN:

Make:

Model:

Vehicle year:

It is to be impounded at:

Enforcement officer ID:

Station:

Part 2 of this form outlines your rights (including an outline of the rights of appeal given to the registered person of an impounded vehicle under sections 102 and 110 of the Act).

If a blood sample has been taken, the impounded vehicle will be released to you when you are notified of the result of the blood test, but only if—

(a) the blood test shows you had a blood concentration of, or less than, 80 milligrams of alcohol per 100 millilitres of blood; and

(b) the result of the blood test is notified to you before the close of the 28-day impoundment period.

Part 2

Outline of rights relating to impoundment of vehicle referred to in this notice

What about personal property in the vehicle?

1 Any personal property (other than property attached to or used in connection with the operation of the vehicle) will be released on request to any person who produces satisfactory evidence that he or she was lawfully entitled to possession of the vehicle or personal property immediately before the vehicle was moved. If the vehicle was carrying goods at the time of seizure and impoundment, they will be released to any person acting on behalf of the owner of the goods if the person produces satisfactory evidence of the owner's consent to the release or they will be released to a bailiff or constable executing

Schedule 4A—*continued*
Form—*continued*

a warrant to seize property under section 94 of the Summary Proceedings Act 1957.

Will my trailer be impounded?

2 A trailer or any other vehicle without motive power that is being towed by or is attached to a motor vehicle at the time of seizure and impoundment will not be seized or impounded.

What are my appeal rights?

3 If you are the registered person of the motor vehicle that has been seized and impounded, you may appeal against the seizure and impoundment of the vehicle. In the first instance you may appeal to the Police and, if that appeal is unsuccessful, to the District Court. If you decide to appeal to the Police, you must lodge your appeal with the Police within 14 days of the date on which the vehicle was seized and impounded. After that time you may appeal to the District Court only with the agreement of the Police, who must be satisfied that exceptional circumstances exist for not appealing to the Police within the 14-day period. These appeal rights are set out in full in sections 102 and 110 of the Act.

What are the grounds for appeal?

4 The grounds for appeal are that—

(a) the impounded vehicle was a stolen or converted vehicle at the time of the seizure and impoundment; or

(b) the enforcement officer who seized the vehicle did not believe on reasonable grounds that at the time of driving the vehicle on a road—

(i) the driver was disqualified from holding or obtaining a driver licence authorising the driver to drive that vehicle; or

(ii) the driver's driver licence was suspended or was revoked; or

Schedule 4A—*continued*
Form—*continued*

(iii) the driver did not hold a driver licence and was previously forbidden to drive because he or she was an unlicensed driver or his or her driver licence had expired; or

(iv) the driver—

(A) had a breath alcohol concentration exceeding 400 micrograms of alcohol per litre of breath or a blood alcohol concentration exceeding 80 milligrams per 100 millilitres of blood, or failed or refused to undergo a blood test after having been required or requested to do so under section 72 or 73 of the Act; and

(B) had been convicted of 2 or more offences against section 56(1) or (2), 58(1), 60(1), or 61(1) or (2) of the Act within the last 4 years; or

(c) the enforcement officer who seized the vehicle did not comply with the notice requirements set out in section 96(2) of the Act; or

(d) the registered person did not know and could not reasonably have been expected to know that the driver was not permitted to drive; or

(e) the registered person took all reasonable steps to prevent the driver from driving the vehicle; or

(f) the driver drove the vehicle in a serious medical emergency (including carrying a person who was about to give birth to a child).

How do I lodge an appeal?

5 If you believe you have grounds for appealing against the impoundment of the vehicle, you should go to the Police station nearest to where the vehicle was impounded and pick up a copy of the appeal documents. The appeal must be in writing and set out in a statutory declaration. It must clearly state the grounds for the appeal. The declaration must be taken in

Schedule 4A—*continued*
Form—*continued*

front of someone entitled to take statutory declarations. You must lodge your appeal with the Police within 14 days of the date on which the vehicle was seized and impounded.

Who will determine my appeal?

6 The initial appeal against the impoundment of a vehicle will be determined by an enforcement officer authorised for the purpose by the Commissioner of Police.

Is there a time limit within which an appeal must be determined?

7 The officer who determines your appeal must do so as soon as is reasonably practicable and not later than 2 working days after the day of lodgement, in the case of an appeal lodged on the ground that the impounded vehicle was a stolen or converted vehicle at the time of seizure and impoundment, and not later than 5 working days after the day of lodgement, in any other case.

Results of appeal to Police

8 The officer who determines your appeal will either allow the appeal or dismiss it. He or she may refuse to consider your appeal if satisfied that the appeal is frivolous or vexatious, or that you have provided insufficient information. If your appeal is not dismissed on these grounds, the officer who considers it will allow it if satisfied that one of the grounds listed in paragraph 4 is established. If he or she is not satisfied that one of the grounds listed in paragraph 4 is established, the appeal will be dismissed.

Appeal to District Court

9 If your appeal is dismissed, you may appeal to the District Court where a District Court Judge will decide whether your appeal should be allowed. An appeal to a District Court must be made not later than 28 days after the date on which you were notified of the decision appealed against, or within such

Schedule 4A—*continued*
Form—*continued*

further period as the Court may allow. Requirements about the way in which the appeal is to be made and determined are specified in section 111 of the Act. The District Court must determine the appeal only on the grounds specified in the Act.

Towage and storage fees

10 The fees for towage and storage are set out in regulations. You can obtain a copy of the fees from your nearest Police station.

How do I go about paying the fees?

11 If you are liable to pay fees for towage or storage, the law, in general, requires you to pay the fees in full or enter into an arrangement with the storage provider to pay the outstanding fees over time. You can arrange to pay some or all of the fees during the period of the impoundment.

Release of vehicle

12 The storage provider must release the impounded vehicle to the registered person or a person authorised by the registered person if your appeal is successful. The storage provider must release the impounded vehicle to the registered person if the Police finally decide not to take proceedings against the person who drove the vehicle, or if proceedings have been taken and the person is acquitted. The Act specifies other circumstances in which an impounded vehicle may be released before the close of the 28-day impoundment period. The storage provider must release the impounded vehicle to the registered person of the vehicle, or a person authorised by the registered person, on or after the close of the 28-day impoundment period if the registered person or authorised person—

(a) shows proof of identity and either proof of ownership of the vehicle or the registered person's copy of this notice; and

(b) pays the towage and storage fees and charges or enters into an arrangement with the storage provider to pay

Schedule 4A—*continued*
Form—*continued*

those fees and charges. (Note that a registered person may enter into an arrangement only with the agreement of the person with whom the arrangement is entered into.)

Vehicle may be seized under warrant

13 The vehicle may be seized by a bailiff or constable executing a warrant to seize property under section 94 of the Summary Proceedings Act 1957 or by a Registrar, bailiff, or constable executing a warrant of confiscation under section 132 of the Sentencing Act 2002.

Vehicle and personal property may be sold by storage provider

14 The storage provider may apply to an enforcement officer authorised by the Commissioner of Police for approval to dispose of the impounded vehicle, and any personal property found in the vehicle, if—

(a) 10 days have elapsed since the close of the impoundment period; and

(b) the registered person of the vehicle or a person authorised by the registered person has not claimed the vehicle and has not paid the towage and storage fees and charges or entered into an arrangement to pay those fees and charges; and

(c) no other person has established to the satisfaction of the authorised officer that the person is entitled to possession of the vehicle or any personal property found in the vehicle.

Schedule 2

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New Schedule 6 added

Schedule 6

r 8B

Sale or disposal prohibition notice

Form

Sale or disposal prohibition notice

Section 98A, Land Transport Act 1998

Part 1

To [*full name*]:

Of [*full address*]:

*Date of birth:

*Occupation:

*Telephone number:

*Driver licence number:

You have been charged with:

Contrary to:

It is alleged that this offence [or these offences] involved the use of the motor vehicle described in the Appendix (the **vehicle**).

*If known.

Part 2

To [*full name*]:

Of [*full address*]:

*Date of birth:

*Occupation:

*Telephone number:

*Driver licence number:

You are the registered person of the vehicle.†

*If known.

†Under Part 17 of the Land Transport Act 1998 (and includes the registered owner under the Transport (Vehicle and Driver Registration and Licensing) Act 1986).

Schedule 6—*continued*
Form—*continued*

Part 3

Prohibition on sale or disposal of vehicle

I believe, on reasonable grounds in the circumstances, that, if the person named in Part 1 of this notice is convicted of the offence(s) referred to in that Part, the Court will order the confiscation of the vehicle under the Sentencing Act 2002.

Accordingly, under section 98A(2) of the Land Transport Act 1998 (the **Act**), this notice prohibits the sale or disposal of the vehicle. Under section 98A(3) of the Act, this means that you, the person named in Part 1 and, if applicable, the person named in Part 2, may not sell, or dispose of,—

(a) the vehicle:

(b) the following parts of the vehicle:

This notice remains in force until cancelled by—

(a) the Commissioner of Police under section 98A(4) of the Act; or

(b) the District Court under section 98B(3) of the Act.

If you fail or refuse to comply with this notice and the prohibition imposed by it, you will commit an offence under section 52(1)(c) of the Act and be liable, on conviction for that offence, to a fine not exceeding $10,000.

Dated:

Signed:

(Commissioner of Police/[*Designation*], a delegate of the Commissioner of Police*)

*Select one.

Appendix

The motor vehicle to which this notice applies is described as follows:

Registration number or VIN:

Make:

Model:

Schedule 6—*continued*
Form—*continued*

Vehicle year:

Chassis/body number:

The details of the enforcement officer involved and any other details are as follows:

Enforcement officer ID:

Other:

Notes

This notice has been issued by, or under a delegation from, the Commissioner of Police.

Under section 98A(4)(a) of the Act, the Commissioner must cancel this notice if the person named in Part 1—

(a) does not own, or does not have a legal or equitable interest in, the vehicle; or

(b) is not convicted of an offence that would permit or require a court to order the confiscation of the vehicle under the Sentencing Act 2002; or

(c) is convicted of such an offence but a court does not order the confiscation of the vehicle under the Sentencing Act 2002.

Alternatively, under section 98A(4)(b) of the Act, the Commissioner may cancel this notice if—

(a) the vehicle was stolen or converted at the time the person named in Part 1 used it in a way that gave rise to the charge; or

(b) the owner of the vehicle named in Part 2 took all reasonable steps to prevent the person named in Part 1 from using the vehicle in a way that gave rise to the charge; or

(c) the Commissioner is satisfied that prohibiting the sale of the vehicle would entail undue hardship to the person named in Part 1, the owner of the motor vehicle named in Part 2, or any other person.

Appeal of notice to District Court

Any person who is given notice under section 98A may appeal, under section 98B of the Act, to the District Court against the Commissioner's decision to give the notice.

Schedule 6—*continued*
Form—*continued*

The Court must determine the appeal on 1 or more of the grounds specified in section 98A(4) of the Act.

The Court may confirm or cancel the notice.

Every notice appealed against continues in force pending the determination of the appeal, and no person is excused from complying with the notice on the ground that an appeal is pending.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on the date of their notification in the *Gazette*, amend the Land Transport (Offences and Penalties) Regulations 1999.

The amendments—

- replace Schedule 4 of the principal regulations with *new Schedules 4 and 4A*. The new schedules prescribe the form of notice to be given to the driver and registered person of a motor vehicle impounded under section 96 of the Land Transport Act 1998 and to the storage provider of the vehicle. The new schedules replace the single form in the previous Schedule 4 with 2 forms to be used as appropriate. The change to 2 forms is necessary as a consequence of the enactment of the Land Transport (Enforcement Powers) Amendment Act 2009; and
- add a *new Schedule 6* to the principal regulations. The new schedule prescribes the form of notice prohibiting the sale or disposal of a motor vehicle to be given to a person under section 98A of the Land Transport Act 1998 (as inserted into that

Act by the Land Transport (Enforcement Powers) Amendment Act 2009).

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 17 December 2009.
These regulations are administered by the Ministry of Transport.

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2009