2009/360

Sentencing Amendment Regulations 2009

Anand Satyanand, Governor-General

Order in Council

At Wellington this 23rd day of November 2009

Present:
His Excellency the Governor-General in Council

Pursuant to section 147 of the Sentencing Act 2002, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal regulations amended	2
4	Changes to ownership of confiscated motor vehicles	2
5	New regulation 4A inserted	2
	4A Security interests in respect of confiscated vehicles	2
6	Schedule amended	3
	Schedule	3
	New forms substituted in Schedule	

Regulations

1 Title

These regulations are the Sentencing Amendment Regulations 2009.

2 Commencement

These regulations come into force on 1 December 2009.

3 Principal regulations amended

These regulations amend the Sentencing Regulations 2002.

4 Changes to ownership of confiscated motor vehicles

Regulation 4(3) to (5) are revoked.

5 New regulation 4A inserted

The following regulation is inserted after regulation 4:

"**4A Security interests in respect of confiscated vehicles**

"(1) This regulation applies if a motor vehicle is confiscated under section 128, 129, or 129A of the Act and—

"(a) surrendered in accordance with section 132 of the Act; or

"(b) seized under a warrant issued under section 132 of the Act.

"(2) The Registrar of the court must, on the day after the vehicle is surrendered or seized, take all lawful and reasonable steps to check whether any security interest is registered in respect of the vehicle.

"(3) If a security interest is found to be registered, the Registrar must immediately notify the person entered in the register as the secured party of the following matters:

"(a) that the Registrar may—

"(i) sell the motor vehicle under section 137 of the Act; or

"(ii) dispose of the motor vehicle under section 138 of the Act:

"(b) if the vehicle is confiscated under section 128 or 129 of the Act, the effect of sections 137 and 139 to 142 of the Act:

"(c) if the vehicle is confiscated under section 129A of the Act, the effect of sections 137, 137A, 139, and 142 of the Act."

6 Schedule amended

The Schedule is amended by revoking form 12 and substituting the forms 11A to 13 set out in the Schedule of these regulations.

Schedule

r 6

New forms substituted in Schedule

Form 11A

Warning notice to secured party

Section 129F, Sentencing Act 2002

Note: In this form, illegal street racing offence means an offence against section 36A(1)(a) or (c) of the Land Transport Act 1998.

To every party to an encumbrance relating to the following vehicle:

Make and model:

Year of first registration:

Registration number:

1 [*Full name, address, occupation, date of birth*] (the offender) was convicted on [*date*] of an offence against section 36A(1)(a)/36A(1)(c)* of the Land Transport Act 1998 involving this vehicle by the High Court/District Court* at [*place*].

*Select one.

2 *Omit this paragraph if it does not apply.*

The following substitute/substitutes* for the offender has/have* an interest in the vehicle:

[*For each substitute, specify full name, address, occupation, and date of birth.*]

*Select one.

3 This is the second illegal street racing offence committed by the offender within 4 years.

Form 11A—*continued*

4 On [*date*], the High Court/District Court* at [*place*] convicted the offender of an offence against section 36A(1)(a)/36A(1)(c)* of the Land Transport Act 1998 (the previous offence).

*Select one.

5 The previous offence was committed on [*date*].

6 You are warned that the court may, in accordance with section 129A of the Sentencing Act 2002, order that any vehicle that the offender/a substitute* owns or in which the offender/a substitute* has an interest (including a vehicle other than the vehicle involved in the current offence or the previous offence) be confiscated and destroyed if—

(a) the offender commits another illegal street racing offence before the expiry of 4 years from the commission of the previous offence; and

(b) the offender is driving or in charge of that vehicle at the material time.

*Select one.

Date:

Place:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 11B
Written caution
Section 129B, Sentencing Act 2002

Note: In this form, illegal street racing offence means an offence against section 36A(1)(a) or (c) of the Land Transport Act 1998.

To [*full name, address, occupation, date of birth*] (being a person registered in respect of the motor vehicle described in paragraph 3 or believed to have an interest in that vehicle)

1 [*Full name, address, occupation, date of birth*] (the offender) was convicted on [*date*] of [*offence*] (the current offence) by the High Court/District Court* at [*place*].

*Select one.

2 The current offence was committed on [*date*].

3 At the material time, the offender was driving or in charge of the following vehicle that you are believed to own or have an interest in:

Make and model:

Year of first registration:

Registration number:

4 The court is not satisfied that any of the exceptions from service of a written caution in section 129B(3) of the Sentencing Act 2002 apply to you.*

*The exceptions in section 129B(3) of the Sentencing Act 2002 are the same as grounds (a) to (d) outlined below under Right of review.

Part A
Caution in respect of confiscation of vehicle

5 You are warned that the court may order that any vehicle that you own or in which you have an interest (including a vehicle other than the vehicle involved in the current offence) be confiscated in accordance with section 128 of the Sentencing Act 2002 if—

(a) the offender commits another offence specified in section 128(1) of the Sentencing Act 2002 (including an illegal street racing offence) within 4 years after the commission of the current offence; and

Form 11B—*continued*

(b) the offender is driving or in charge of that vehicle at the material time.

Part B
Caution in respect of confiscation and destruction of vehicle

Complete Part B only if the current offence is an illegal street racing offence.

6 *For this paragraph select the statement that applies.*

Statement A

The offence committed by the offender on this occasion is an illegal street racing offence.

Statement B

The offence committed by the offender on this occasion is—

(a) an illegal street racing offence; and

(b) the second illegal street racing offence committed by the offender within 4 years.

On [*date*], the High Court/District Court* at [*place*] convicted the offender of an offence against section 36A(1)(a)/36A(1)(c)* of the Land Transport Act 1998 (the previous offence).

*Select one.

The previous offence was committed on [*date*].

7 *For this paragraph select the statement that applies.*

Statement A (Select this statement if the current offence is the first illegal street racing offence committed by the offender within the last 4 years.)

The offender will have committed 3 illegal street racing offences within 4 years if the offender commits 2 further illegal street racing offences within 4 years after [*date of commission of current offence*].

Form 11B—*continued*

Statement B (Select this statement if the current offence is the second illegal street racing offence committed by the offender within the last 4 years.)

The offender will have committed 3 illegal street racing offences within 4 years if the offender commits 1 further illegal street racing offence within 4 years after [*date of commission of previous offence*].

8 You are warned that the court may order that any vehicle that you own or in which you have an interest (including a vehicle other than the vehicle involved in the current offence) may be confiscated and destroyed in accordance with section 129A of the Sentencing Act 2002 if—

(a) the offender commits 3 illegal street racing offences within 4 years; and

(b) at the material time (in respect of the third illegal street racing offence) the offender is driving or in charge of that vehicle.

Date:

Place:

Signature:

(Judge)

Right of review

You have the right to seek a review of the decision to serve you with this written caution on 1 or more of the following grounds:

(a) the motor vehicle was stolen or converted at the material time:

(b) you did not own or have an interest in the motor vehicle at the material time:

(c) you are a party to an encumbrance (eg, a hire purchase agreement) relating to the motor vehicle but have no other relationship to the offender:

(d) the motor vehicle was let on hire at the material time in accordance with a rental service licence under the Land Transport Act 1998.

Form 11B—*continued*

To apply for a review, you must send an application to the court that issued this caution within 20 working days of the date that this written caution was served on you. Your application must include a statutory declaration stating why 1 or more of the grounds above applies. You may use form 61 of the Summary Proceedings Regulations 1958 as a guide on how to make your application. The Summary Proceedings Regulations 1958 are available online at www.legislation.govt.nz.

Form 12
Warrant for confiscation of motor vehicle

Section 132(2), Sentencing Act 2002

To every constable and every bailiff, and to the Registrar of the High Court/District Court* at [*place*]

*Select one.

1 [*Full name, address, occupation, date of birth*] (the offender) was convicted on [*date*] of [*offence*] by the High Court/District Court* at [*place*].

*Select one.

2 *Omit this paragraph if it does not apply*.

At the material time the offender was driving or in charge of a vehicle in which [*full name, address, occupation, date of birth*] (the substitute) has an interest.

3 On [*date*], an order was made by the High Court/District Court* at [*place*] for the confiscation of the following motor vehicle in which the offender/substitute* has an interest:

Make and model:

Year of first registration:

Registration number:

*Select one.

4 Under the confiscation order, the offender/substitute* was required to surrender the motor vehicle to a constable or bailiff or the Registrar at [*place, date, time*].

*Select one.

5 The offender/substitute* has failed to surrender the motor vehicle.

*Select one.

6 I direct you, unless the motor vehicle is sooner surrendered to a constable or bailiff or the Registrar, to seize the motor vehicle and to deliver it into the custody of the Registrar of the High Court/District Court* at [*place*].

*Select one.

Form 12—*continued*

Date:
Place:
Signature:
(Judge)

Form 13
Warrant for recovery of motor vehicle

Section 137B(2), Sentencing Act 2002

To every constable and every bailiff, and to the Registrar of the High Court/District Court* at [*place*]

*Select one.

1 On [*date*], an order was made by the High Court/District Court* at [*place*] for the confiscation and destruction of the following motor vehicle:

Make and model:

Year of first registration:

Registration number:

*Select one.

2 The vehicle was sold to [*full name, address, occupation, date of birth*] (the purchaser) on [*date*].

3 The sale was subject to a condition that the vehicle be dismantled for any saleable parts and the remainder destroyed to the satisfaction of the Registrar within 30 working days or any longer period specified in writing by the Registrar.

4 The purchaser did not comply with this condition of sale and the person in possession of the vehicle was required to surrender the vehicle to a constable or bailiff or the Registrar at [*place, date, time*].

5 The person has failed to surrender the motor vehicle.

6 I direct you, unless the motor vehicle is sooner surrendered to a constable or bailiff or the Registrar, to seize the motor vehicle and to deliver it into the custody of the Registrar of the High Court/District Court* at [*place*].

*Select one.

Form 13—*continued*

Date:
Place:
Signature:
(Judge)

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 1 December 2009, amend the Sentencing Regulations 2002 (the **principal regulations**). The amendments are consequential on the Sentencing (Vehicle Confiscation) Amendment Act 2009, which also comes into force on 1 December 2009, and include the insertion of 1 new regulation and 4 new forms into the principal regulations.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 26 November 2009.
These regulations are administered by the Ministry of Justice and the Department of Corrections.

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