

15. Impounding motorbikes for noise offences

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15.1 Introduction

In accordance with Chapter 19, Part 3: 'Powers relating to noise' of the PPRA, officers may issue a 'noise abatement direction' for a number of environmental nuisances by noise complaints. Where the noise generated by motorbike operating off a road is deemed to be excessive, an officer may initially issue a motorbike noise abatement direction. If the motorbike noise abatement direction is contravened, the officer may then seek a motorbike noise abatement order (see s. 13.29.4: 'Motorbike noise abatement orders' of the OPM). If the driver of the motorbike contravenes the order, the motorbike may be impounded in accordance with this chapter.

15.2 Powers for impounding motorbikes

Section 80: 'Impounding motorbike for motorbike noise direction offence or motorbike noise order offence' of the PPRA provides that an officer may impound a motorbike if, in relation to the motorbike:

- (i) the driver of the motorbike is charged with having committed:
 - (a) a motorbike noise direction offence; or
 - (b) a motorbike noise order offence; or
- (ii) the driver of the motorbike is a child, paragraph (i) does not apply, and the officer reasonably suspects the child has committed:
 - (a) a motorbike noise direction offence; or
 - (b) a motorbike noise order offence.

For example, the child is to be cautioned or referred to a youth justice conference instead of being charged for the offence (see Chapter 5: 'Children' of the OPM).

A motorbike impounded under s. 80 may be impounded for the initial impoundment period. For the definition of motorbike noise direction offence, motorbike noise order offence and initial impoundment period see s. 69: 'Definitions for ch 4' of the PPRA.

15.3 Procedures for motorbike noise direction offences

Where a motorbike has been impounded because an officer reasonably suspects the driver of a motorbike has committed a motorbike noise direction offence, the impounding officer is to ensure that, as soon as reasonably practicable after impounding the motor vehicle:

- (i) a Form 103: 'Impounding Notice (Motorbike Noise Direction Offence)' (available in QPRIME and on QPS Forms Select) is completed and served in accordance with s. 16.6: 'Service of impounding notices' of this Manual;
- (ii) an application for a motorbike noise abatement order is made (see s. 13.29.4: 'Motorbike noise abatement orders' of the OPM); and
- (iii) a 'Direction – noise/move on/ eviction' flag is created against the person's QPRIME record.

15.4 Procedures for motorbike noise order offences

Where a motorbike has been impounded because of a motorbike noise order offence and s. 84: 'Content of notice for second or subsequent motorbike noise order offence' of the PPRA:

- (i) does not apply, the impounding officer is to ensure that as soon as reasonably practicable after impounding the motorbike:
 - (a) a Form 104: 'Impounding Notice (First Motorbike Noise Order Offence)' (available in QPRIME and on QPS Forms Select) is completed and served in accordance with s. 16.6: 'First type 2 vehicle related offence (pre-impoundment offence)' of this Manual;
 - (b) an application for an impounding order is made within forty-eight hours after charging the driver with the offence (see s. 16.7: 'Applications for impounding order and forfeiture orders generally' of this Manual and s. 15.5: 'Application for impounding order for motorbike noise order offences' of this chapter); and
 - (c) a 'Direction – noise/move on/eviction' flag is created against the person's QPRIME record;
- (ii) applies, the impounding officer is to ensure that, as soon as reasonably practicable after impounding the motor vehicle:
 - (a) a Form 105: 'Impounding Notice (Second or Subsequent Motorbike Noise Order Offence)' (available in QPRIME and on QPS Forms Select) is completed and served in accordance with s. 16.8: 'Service of impounding notices' of this Manual;

- (b) an application for a forfeiture order is made within forty-eight hours after charging the driver with the offence (see s. 16.20: 'Obtaining a court order to impound or forfeit a motor vehicle for evasion offences' of this Manual and s. 15.6: 'Application for forfeiture order for motorbike noise order offences' of this chapter); and
- (c) a 'Direction – noise/move on/eviction' flag is created against the person's QPRIME record.

15.5 Application for impounding order for motorbike noise order offence

Where s. 86(1): 'Application for impounding order for motorbike noise order offence' of the PPRA applies, the impounding officer is to, within forty-eight hours after charging the driver with the initiating impoundment offence, apply, or ensure that another officer applies, for an order that the motorbike be held at a holding yard for a period of not more than three months (an 'impounding order').

The application is to be made in a Form 106: 'Application for Impounding Order (Motorbike Noise Order Offence)' (available in QPRIME and on QPS Forms Select).

The applicant officer is to lodge, or ensure the following documentation is lodged, with the clerk of the court of the relevant court within forty-eight hours after charging the driver with the initiating impoundment offence:

- (i) a copy of the Form 104: 'Impounding Notice (First Motorbike Noise Order Offence)' with completed endorsement as to service for each of the persons served with the notice;
- (ii) a completed Form 106: 'Application for Impounding Order (Motorbike Noise Order Offence)';
- (iii) a certified copy of the motorbike noise order to which the application relates; and
- (iv) a Form 046: 'Affidavit' outlining the grounds for the application.

The following documentation is required for the hearing of the application and should be provided to the relevant police prosecutions corps or to the Office of the Director of Public Prosecutions, as is appropriate, in sufficient time to allow for an examination of the application for an impounding order by a prosecutor prior to the hearing of the application:

- (i) a copy of the Form 104: 'Impounding Notice (First Motorbike Noise Order Offence)' with completed endorsement as to service for each of the persons served with the notice;
- (ii) a copy of the completed Form 106: 'Application for Impounding Order (Motorbike Noise Order Offence)' with completed endorsement as to service for each of the persons served with the notice;
- (iii) a Form 046: 'Affidavit' outlining the grounds for the application;
- (iv) all statements/affidavits taken from witnesses, including those of a corroborative, conflicting or negative nature;
- (v) a certified copy of the noise abatement order to which the application relates;
- (vi) the criminal and traffic histories of the driver of the vehicle at the time of impounding; and
- (vii) a QP 0681: 'Impounding Order (Motorbike Noise Order Offence)' or QP 0682: 'Impounding Order (Motorbike Noise Order Offence – Not Decided)' as appropriate, prepared for issuance by the relevant court. The correct particulars of the applicant officer and vehicle should be included on the 'Impounding Order' document in the appropriate spaces provided on the documents.

The applicant officer is responsible for completing the documentation required for an application for an impounding order and providing those documents to the relevant prosecuting authority.

Officers should note that if the driver is a child and has not been charged with the motorbike noise order offence (e.g. cautioned) no application should be made.

15.6 Application for forfeiture order for motorbike noise order offences

Where s. 91(1): 'Application for forfeiture order for motorbike noise order offence' of the PPRA applies, the impounding officer is to, within forty-eight hours after charging the driver with the initiating impoundment offence, apply, or ensure that another officer applies, for an order that the motorbike be forfeited to the State (a '**forfeiture order**').

The application is to be made in a Form 107: 'Application for Forfeiture Order (Motorbike Noise Order Offence)'.

The applicant officer is to lodge, or ensure the following documentation is lodged, with the clerk of the court of the relevant court within forty-eight hours after charging the driver with the initiating impoundment offence:

- (i) a copy of the Form 105: 'Impounding Notice (Second or Subsequent Motorbike Noise Order Offence)' with completed endorsement as to service for each of the persons served with the notice;
- (ii) a completed Form 107: 'Application for Forfeiture Order (Motorbike Noise Order Offence)';

- (iii) a certified copy of the motorbike noise order to which the application relates; and
- (iv) a form 046: 'Affidavit' outlining the grounds for the application.

The following documentation is required for the hearing of the application and should be provided to the relevant police prosecutions corps or to the Office of the Director of Public Prosecutions, as is appropriate, in sufficient time to allow for an examination of the application for an impounding order by a prosecutor prior to the hearing of the application:

- (i) a copy of the Form 105: 'Impounding Notice (Second or Subsequent Motorbike Noise Order Offence)' with completed endorsement as to service for each of the persons served with the notice;
- (ii) a completed Form 107: 'Application for Forfeiture Order (Motorbike Noise Order Offence)' with completed endorsement as to service for each of the persons served with the notice;
- (iii) a form 046: 'Affidavit' outlining the grounds for the application;
- (iv) all statements/affidavits taken from witnesses, including those of a corroborative, conflicting or negative nature;
- (v) a certified copy of the motorbike noise order to which the application relates;
- (vi) the criminal and traffic histories of the driver of the vehicle at the time of impounding and the facts relating to the previous motorbike noise order offences on which the application relies. These facts may be obtained from the Court Brief (QP9); and
- (vii) a QP 0683: 'Forfeiture Order (Motorbike Noise Order Offence)' document prepared for issuance by the relevant court. The correct particulars of the applicant officer and vehicle should be included on the 'Forfeiture Order' document in the appropriate spaces provided on the documents.

The applicant officer is responsible for completing the documentation required for an application for a forfeiture order and providing those documents to the relevant prosecuting authority.

Officers should note that if the driver is a child and has not been charged with the motorbike noise order offence (e.g. cautioned) no application is to be made.

15.7 Execution of motorbike noise order offence impounding and forfeiture orders

Upon the impounding order or forfeiture order being issued by the court for a motorbike noise order offence, the following action should be taken as soon as practicable:

- (i) the prosecutor appearing in relation to the matter is to:
 - (a) ensure the particulars of the order, including the vehicle details, are entered into the case file in the relevant QPRIME occurrence; and
 - (b) forward the original order to the OIC of the originating station;
- (ii) the OIC of the originating station is to:
 - (a) scan the order into the relevant QPRIME occurrence and retain the original court order; and
 - (b) task an appropriate officer to serve the order and impound the motorbike;
- (iii) the appropriate officer is to print a copy of the order and commence action to seize the motorbike;
- (iv) upon execution of the order and impoundment/seizure of the motorbike, the executing officer is to add a supplementary report to the relevant QPRIME occurrence reflecting particulars of service; and
- (v) where the order is not served, and the motorbike has not been impounded/seized, further attempts are to be made until successful service is affected. If the respondent is unable to be located, the officer is to:
 - (a) create a BOLO for the person and motorbike via the 'add flag' section of QPRIME; and
 - (b) commence a narrative of circumstances of attempts of service in QPRIME.

15.8 Authorisation to enter, search and seize impounded or forfeited motorbikes

Officers may need to locate and retrieve motorbikes in situations where the owner has had possession of the motorbike as it was returned until the application for the impounding order or forfeiture order has been decided.

Section 110: 'Powers for enforcing court order' of the PPRA provides that for giving effect to the impounding order or forfeiture order, the relevant court may, in the order, authorise an officer, without warrant, to enter any place the officer

reasonably suspects is a place where the motorbike may be found and search for, impound, or if the motorbike is forfeited to the State, take possession of, and remove the motorbike.

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