



## **Corrections Amendment Regulations (No 2) 2013**

Jerry Mateparae, Governor-General

### **Order in Council**

At Wellington this 11th day of December 2013

Present:

His Excellency the Governor-General in Council

Pursuant to section 200 of the Corrections Act 2004, 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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## Regulations

### 1 Title

These regulations are the Corrections Amendment Regulations (No 2) 2013.

### 2 Commencement

These regulations come into force on 10 February 2014.

### 3 Principal regulations

These regulations amend the Corrections Regulations 2005 (the **principal regulations**).

### 4 Regulation 65 replaced (Female and male quarters)

Replace regulation 65 with:

#### “65 Accommodation of male and female prisoners

“(1) Male and female prisoners must be detained—

“(a) in separate prisons; or

“(b) within the same prison in separate quarters that are secured by different locking systems.

“(2) Where there is doubt about whether a prisoner is male or female, the chief executive must determine whether the prisoner is a male or female prisoner for the purpose of subclause (1).

“(3) If a prisoner supplies a copy of the prisoner’s birth certificate that records the prisoner’s sex as female or male, the determination under subclause (2) must be made in accordance with that sex.

“(4) If a prisoner supplies a copy of the prisoner’s birth certificate that records the prisoner’s sex as indeterminate, or records no sex, the chief executive must—

“(a) undertake a review of the determination made under subclause (2); and

“(b) inform the prisoner that a review is being undertaken.

“(5) If a prisoner is not satisfied with the determination made under subclause (2), the prisoner may make an application for review under regulation 65B.

**“65A Interpretation**

In regulations 65B to 65D,—

“**nominated sex** means the sex, whether male or female, nominated by a prisoner

“**sentence expiry date** has the same meaning as in section 4(1) of the Parole Act 2002

“**serious sexual offence** means a sexual offence under Part 7 of the Crimes Act 1961 that is punishable by a period of imprisonment of 7 years or more.

**“65B Prisoner may apply for review of determination as to sex**

“(1) A prisoner may apply to the chief executive for a review of the determination made under regulation 65(2).

“(2) However, a prisoner may not make an application under sub-clause (1) if the prisoner—

“(a) is serving a sentence of imprisonment for a serious sexual offence against a person of the prisoner’s nominated sex; or

“(b) is remanded in custody charged with, or awaiting sentence for, a serious sexual offence against a person of the prisoner’s nominated sex; or

“(c) has served a sentence of imprisonment for a serious sexual offence against a person of the prisoner’s nominated sex, and the sentence expiry date is 7 years or less before the date on which the application is made.

“(3) An application must state the prisoner’s nominated sex for the purpose of regulation 65(1).

**“65C Review of determination as to sex**

“(1) This regulation applies if—

“(a) a prisoner applies under regulation 65B for a review of a determination made under regulation 65(2); or

“(b) the chief executive is required by regulation 65(4) to undertake a review of the determination made under regulation 65(2).

“(2) The chief executive must review the determination as soon as is reasonably practicable and—

- “(a) confirm the original determination that the prisoner is a male or female prisoner; or
  - “(b) determine that the prisoner should be recognised as being of the opposite sex to that originally determined.
- “(3) In reviewing a determination, the chief executive must consider the following matters:
- “(a) the prisoner’s nominated sex; and
  - “(b) any evidence provided by the prisoner about whether, and, if so, for how long, the prisoner has lived as a person of the nominated sex; and
  - “(c) any evidence provided by the prisoner about whether the prisoner intends to live permanently as a person of the nominated sex; and
  - “(d) the advice of—
    - “(i) a senior employee of the department who has responsibility for custodial services; and
    - “(ii) a senior employee of the department who has responsibility for health services for prisoners; and
    - “(iii) any other person that the chief executive considers has relevant expertise; and
  - “(e) any advice from a medical practitioner who has seen the prisoner; and
  - “(f) any evidence provided by the prisoner about whether the prisoner has undergone, or is undergoing, medical treatment to acquire a physical conformation that accords with the gender identity of a person of the nominated sex; and
  - “(g) the safety and well-being of the prisoner; and
  - “(h) the safety and well-being of other prisoners (of either sex) with whom the prisoner may be accommodated; and
  - “(i) the security of the prison; and
  - “(j) whether any determination could make it more likely that the prisoner will be segregated from other prisoners in accordance with section 57 to 60 of the Act; and
  - “(k) the likely effect of any determination on the prisoner’s rehabilitation, including the prisoner’s access to special treatment programmes; and
  - “(l) any other matters raised by the prisoner.

**“65D Further review where birth certificate inconclusive**

- “(1) Where the chief executive has made a determination under regulation 65C(2) in any case to which regulation 65C(1)(b) applies, a prisoner may apply to the chief executive for a further review of the determination.
- “(2) Regulation 65C applies with any necessary modifications to the further review.

**“65E Expiry of determination**

- “(1) A determination made under regulation 65(2) or 65C(2) in respect of a prisoner applies until the date on which the prisoner is first released from prison following the determination (excluding any temporary release from custody or temporary removal from prison under section 62 of the Act).
- “(2) However, if the determination was made under regulation 65C(2) following an application for a review under regulation 65B, the chief executive must revoke the determination if—
- “(a) the prisoner supplies a copy of the prisoner’s birth certificate and requests to be recognised in accordance with the sex (if male or female) recorded on the birth certificate; or
  - “(b) the prisoner is charged with a serious sexual offence against a person of the same sex as the prisoner’s nominated sex; or
  - “(c) the chief executive determines, on reasonable grounds, that 1 or more of the factors on which the determination was based have changed to such an extent that the determination is no longer appropriate.
- “(3) If the chief executive revokes a determination under subclause (2), the original determination that applied to the prisoner before the prisoner applied for a review under regulation 65B is reinstated.”

**5 Regulation 190 and cross-heading revoked**

Revoke regulation 190 and the cross-heading above regulation 190.

Rebecca Kitteridge,  
Clerk of the Executive Council.

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### 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 10 February 2014, amend the Corrections Regulations 2005 (the **principal regulations**).

The regulations provide for the chief executive of the Department of Corrections (the **chief executive**) to determine whether a prisoner is a male or female prisoner where, for accommodation purposes, there is doubt about the prisoner's sex. If a prisoner supplies a birth certificate that records the prisoner's sex as male or female, the determination must reflect the prisoner's birth certificate. If a prisoner supplies a birth certificate that records the prisoner's sex as indeterminate, or records no sex, the chief executive must undertake a review of the determination.

Any prisoner who is dissatisfied with the determination may apply to the chief executive for a review unless the prisoner has been charged with, or is serving (or has recently served) a sentence for, a serious sexual offence against a person of the prisoner's nominated sex.

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Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 12 December 2013.  
These regulations are administered by the Department of Corrections.

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