



Corrections Amendment Regulations (No 2) 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 14th day of August 2017

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 85(2), 87(2), and 200 to 202 of the Corrections Act 2004—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the advice of the Minister of Corrections who,—
 - (i) in accordance with section 85(3) of that Act, is satisfied that—
 - (A) the use of pepper spray is compatible with the humane treatment of prisoners; and
 - (B) the potential benefits from the use of pepper spray outweigh the potential risks; and
 - (ii) in accordance with section 87(3) of that Act, is satisfied that—
 - (A) the use of mechanical restraints described in these regulations is compatible with the humane treatment of prisoners; and
 - (B) the potential benefits from the use of mechanical restraints described in these regulations outweigh the potential risks.

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Regulations

1 Title

These regulations are the Corrections Amendment Regulations (No 2) 2017.

2 Commencement

These regulations come into force on 17 September 2017.

3 Principal regulations

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

4 Regulation 3 amended (Interpretation)

In regulation 3, revoke the definition of **at risk**.

5 Regulation 4 amended (Application)

Replace regulation 4(3)(b) with:

- (b) regulations—
- (i) 26(1)(d) and (e), 28, and 29(2)(b) and (c); and
 - (ii) 29(1)(b), to the extent that it relates to temporary removal under section 62 of the Act:

6 Regulation 26 amended (Classes of prisoners who may be temporarily released under section 62)

- (1) In regulation 26(1)(d), replace “27(u)” with “29(2)(b)”.
- (2) In regulation 26(1)(e), replace “27(v)” with “29(2)(c)”.

7 Regulation 27 revoked (Purposes for which eligible prisoners may be temporarily released under section 62)

Revoke regulation 27.

8 Regulation 29 replaced (Purposes for which eligible prisoners may be temporarily removed under section 62)

Replace regulation 29 with:

29 Purposes for which eligible prisoners may be temporarily released or temporarily removed under section 62

- (1) A prisoner who is eligible for temporary release, or temporary removal, under section 62 may be temporarily released or temporarily removed (as the case may be) for any of the following purposes that the chief executive considers will facilitate 1 or more of the objectives specified in section 62(2)(a) of the Act (subject to the considerations in section 62(3)):
- (a) to recognise or maintain a family relationship or a friendship (for example, attending a funeral or tangi):
 - (b) to obtain medical, or other, assessment or treatment:
 - (c) to give birth, or attend the birth of the prisoner's child, or visit the prisoner's newborn child:
 - (d) to engage with, take part in, or attend a religious, community, cultural, educational, recreational, service, or sporting group, activity, or event:
 - (e) to undertake an activity that supports the rehabilitative or reintegrative needs of the prisoner by, for example,—
 - (i) attending a family group conference or restorative justice conference:
 - (ii) attending a programme:
 - (iii) seeking paid employment:
 - (iv) seeking or receiving vocational training:
 - (f) to prepare for the possibility of release by, for example,—
 - (i) engaging with a person or agency that will support the prisoner on release:
 - (ii) purchasing equipment or possessions needed on release.
- (2) A prisoner who is eligible for temporary release under section 62 of the Act may be temporarily released for any of the following additional purposes that the chief executive considers will facilitate 1 or more of the objectives specified in section 62(2)(a) of the Act (subject to the considerations in section 62(3)):
- (a) to undertake paid employment (including self-employment):
 - (b) to assist the Police in relation to the prevention, investigation, and detection of offences:
 - (c) to enable the Police to exercise powers under section 32 or 33 of the Policing Act 2008.

9 Regulation 64 amended (Prisoners suspected of concealing unauthorised items)

- (1) In regulation 64(1), replace “section 58(1)(a)” with “section 60(1)(a)”.

- (2) Revoke regulation 64(4).
- (3) In regulation 64(5), replace “subclause (4)” with “section 60(5) of the Act”.

10 Regulation 80 replaced (Chief executive to notify medical officers in certain cases)

Replace regulation 80 with:

80 Health centre managers and chief executive must notify medical officers in certain cases

- (1) A health centre manager must ensure that a medical officer is promptly notified if a prisoner’s physical or mental health appears to require the attention of a medical officer.
- (2) The chief executive must ensure that a medical officer is promptly notified if a prisoner has been placed under a mechanical restraint.
- (3) Subclause (2) does not apply—
 - (a) where handcuffs, or a waist restraint used in conjunction with handcuffs, have been applied on a prisoner for the purpose of escorting the prisoner (whether inside or outside a prison); or
 - (b) where a medical officer has recommended the use of the mechanical restraint.

11 Regulation 94 amended (Visits by specified visitors)

Replace regulation 94(2) with:

- (2) Subclause (1) is subject to—
 - (a) regulations 101, 106A, 106B, 110, and 112 to 116; and
 - (b) Schedules 3A and 4.

12 Regulation 101 replaced (Private visitors may be asked to give information)

Replace regulation 101 with:

101 Denying approval of visitor or approving visitor subject to conditions or restrictions

- (1) The chief executive, a contractor, or a prison manager (as the case may be) may decide not to approve a visitor under regulation 91, 92, or 99 if—
 - (a) information that is required to be provided under regulation 106A(1) or 106B(1)—
 - (i) is not provided before the day of the visit; or
 - (ii) is provided before the day of the visit but is reasonably believed to be false; or

- (b) when asked to authorise access to information under regulation 106A(2) or 106B(3), the visitor does not authorise access to the information; or
 - (c) the chief executive, contractor, or prison manager (as the case may be) is satisfied on reasonable grounds that a visit by the visitor to the prisoner is likely to adversely affect 1 or more of the following matters:
 - (i) the security, good order, or discipline of the prison:
 - (ii) the welfare, chances of successful rehabilitation, or safety of the prisoner:
 - (iii) the welfare or safety of any person in the prison, including the visitor; or
 - (d) the purpose of the visit does not fall within any of the purposes authorised in regulation 91 or 98, as applicable.
- (2) A visitor may be approved subject to any conditions or restrictions that are necessary to ensure that the matters in subclause (1)(c) are not adversely affected.

13 Regulation 106 replaced (Visits by children under 16 years)

Replace regulation 106 with:

106 Visitor under 18 years must be accompanied by adult

- (1) A visitor who is under the age of 18 years must be accompanied by a parent, a guardian, or another person who is 18 years or older unless the manager is satisfied that—
- (a) there is good reason for the visitor to visit the prisoner unaccompanied by an adult; and
 - (b) the visit is not contrary to the interests of the visitor.
- (2) The manager of each prison must ensure that the prison, so far as is reasonable and practicable in the circumstances, has in place arrangements with approved adults who are specified visitors and are willing and available to accompany visitors under 18 who do not have a parent, a guardian, or another person who is 18 years or older to accompany them when visiting the prisoner.

Information requirements for non-statutory visitors

106A Visitors may be asked to provide information

- (1) A non-statutory visitor who is applying for approval to visit under regulation 91, 92, or 99 must, if requested, provide any or all of the following information:
- (a) in respect of the prisoner concerned (if the visitor is applying to visit a particular prisoner),—
 - (i) the prisoner's name:

- (ii) any court orders that the visitor is aware of that relate to the prisoner that may have a bearing on the suitability of a visit:
 - (b) in respect of the visitor,—
 - (i) the visitor's name and date of birth:
 - (ii) the nature of the visitor's relationship with the prisoner (if the visitor is applying to visit a particular prisoner):
 - (iii) whether the visitor has ever served a sentence of imprisonment, and if so when:
 - (iv) whether the visitor is currently on bail:
 - (v) whether the visitor has been convicted of an offence within the last 2 years:
 - (vi) whether the visitor has ever been refused admittance to the prison, or any other prison, as a visitor:
 - (vii) any court orders that relate to the visitor that may have a bearing on the suitability of a visit:
 - (viii) whether the prisoner concerned (if the visitor is applying to visit a particular prisoner) has any convictions or current charges for offences against the visitor:
 - (c) in respect of a visitor who is under the age of 18 years, any additional information required to be provided under regulation 106B:
 - (d) any additional information that is necessary to assess the application for approval and ensure the safe management of visits and the safety and welfare of any visitor.
- (2) A visitor who is asked to provide information referred to in subclause (1)(b)(iii) to (v), (vii), or (viii) may be required to provide authority for any specified person to have access to information contained in official records that will verify the information given.

106B Additional information that may be required if visitor is under 18 years

- (1) Any or all of the following information may be requested in respect of a non-statutory visitor under the age of 18 years who is applying for approval to visit under regulation 91, 92, or 99:
- (a) the nature of the relationship of the visitor and any adult visitor:
 - (b) the nature of the relationship of the visitor and the prisoner:
 - (c) if the adult visitor accompanying the visitor is not the visitor's guardian or the visitor is unaccompanied by an adult,—
 - (i) evidence of guardian consent for the visitor to visit the prisoner; or
 - (ii) the reason why evidence of guardian consent is not available:

- (d) whether the prisoner has any convictions or current charges for offences against a child or young person.
- (2) The information required to be provided under this regulation is in addition to any information required under regulation 106A.
- (3) A visitor who is asked to provide information referred to in subclause (1) may be required to provide authority, or a relevant guardian's authority, for any specified person to have access to information contained in official records or held by children's agencies (within the meaning of section 5(1) of the Vulnerable Children Act 2014) that will verify the information given.

14 New regulation 113A and cross-heading inserted

After regulation 113, insert:

Procedure if non-statutory visitor denied approval or conditions imposed

113A Procedure if non-statutory visitor denied approval or conditions imposed

- (1) This regulation and Schedule 3A apply if a decision is made under regulation 91, 92, or 99, as the case may be,—
 - (a) not to approve a non-statutory visitor; or
 - (b) to approve a non-statutory visitor subject to conditions.
- (2) The visitor must be notified in writing, as soon as practicable, of the date, time, and reason that the approval is denied or conditions are imposed.
- (3) In the case of a decision not to approve a visitor, the prisoner whom the visitor wished to see (if any) must be given written notice of the decision and the reasons for the decision.

15 Regulations 115 and 116 replaced

Replace regulations 115 and 116 with:

115 Procedure if non-statutory visitor excluded from prison

- (1) Subclauses (2) and (3) apply if an officer or a staff member excludes a non-statutory visitor from a prison under regulation 114.
- (2) The officer or staff member must—
 - (a) immediately tell the visitor the reason for the exclusion; and
 - (b) record in writing the date, time, and reason for the exclusion.
- (3) If applicable in the circumstances, the prisoner whom the visitor wished to see must be given written notice of the exclusion and the reason for the exclusion.
- (4) Subclause (5) applies if an officer or a staff member excludes a specified visitor from a prison.
- (5) If the person excluded is a specified visitor, the officer or staff member must also—

- (a) immediately notify the manager of the prison of the exclusion; and
 - (b) within 24 hours after the exclusion, notify the visitor in writing of the reason for the exclusion.
- (6) If a person excluded refuses to leave, an officer or a staff member may use reasonable force to remove the person from the prison.

116 Prohibition orders

- (1) The manager of a prison may prohibit a non-statutory visitor from visiting a particular prisoner, several prisoners, or the prison, if the manager is satisfied on reasonable grounds that—
- (a) a visit by the visitor is likely to adversely affect 1 or more of the matters in regulation 101(1)(c); and
 - (b) prohibiting the visitor is appropriate or necessary in the circumstances.
- (2) Visiting may be prohibited only by a written order signed by the manager of the prison.
- (3) A prohibition order may be made—
- (a) at the time a decision is made not to approve a visitor under regulation 91, 92, or 99; or
 - (b) at the time a visitor is excluded under regulation 114; or
 - (c) at any other time.
- (4) Schedule 4 applies to prohibition orders.

16 Regulation 123C amended (Drawing and use of pepper spray)

Replace regulation 123C(1) with:

- (1) An officer who has been issued pepper spray may draw or use it while performing the officer's functions in relation to a prisoner under the Act, these regulations, or any other enactment, while inside or outside a prison.

17 Regulation 125 amended (Prescribed circumstances for use of handcuffs and waist restraints)

- (1) In the heading to regulation 125, replace “**Prescribed**” with “**Additional**”.
- (2) In regulation 125(1), replace “Handcuffs” with “In addition to any situation described in section 83(1) of the Act, handcuffs”.
- (3) After regulation 125(1)(a), insert:
- (aa) by an officer for the purpose of allowing the prisoner to receive medical treatment if the prisoner's temporary removal is subject to a condition, imposed under section 64(1)(c) of the Act, that the handcuffs or restraints must be applied while the prisoner is receiving treatment; and

18 Regulation 143B replaced (When hair samples may be taken)

Replace regulation 143B with:

143B When hair samples may be taken

An officer may require hair samples to be taken from a prisoner only if the prisoner—

- (a) is required under section 124 of the Act to provide a urine sample and the prisoner fails to provide the sample; or
- (b) is required under section 124 of the Act to provide a urine sample and the prison manager believes, on reasonable grounds, that the sample supplied is dilute, tainted, or otherwise contaminated; or
- (c) would be required under section 124 of the Act to provide a urine sample but the officer believes, on reasonable grounds, that the prisoner would fail to supply the urine sample, or that any sample provided would be dilute, tainted, or otherwise contaminated.

19 New Schedule 3A inserted

After Schedule 3, insert the Schedule 3A set out in the Schedule of these regulations.

20 Schedule 4 amended

- (1) In Schedule 4, revoke clause 1.
- (2) In Schedule 4, clause 2, replace “under clause 1 must be effected by written order, signed by the manager of a prison, stating” with “order must state”.
- (3) In Schedule 4, clause 2(g), replace “under regulation 109” with “for that visitor to visit the prison, prisoner, or prisoners concerned.”
- (4) In Schedule 4, clause 4, delete “under clause 1”.

21 Schedule 5 amended

- (1) Replace clause 3(a) to (e) with:
 - (a) handcuffs for general use, which must be of a type approved by the chief executive (but a type may be approved only if the chief executive is satisfied that the handcuffs can be safely and humanely applied in a manner that minimises discomfort to a prisoner, for long periods if necessary):
 - (b) handcuffs for emergency use, which must be of a type approved by the chief executive (but a type may be approved only if the chief executive is satisfied that they can be safely and humanely applied, for short periods):
- (2) Replace clause 4 with:

4 The mechanical restraints authorised for use by security officers are handcuffs described in clause 3(a).

(3) After clause 7, insert:

7A Where handcuffs, or waist restraints used in conjunction with handcuffs, are applied on a prisoner who is being escorted to or from medical treatment, or receiving medical treatment, escorting officers must, taking into account the advice of the treating medical practitioner,—

- (a) implement any measures that are reasonably necessary to ensure that the mechanical restraint does not adversely affect the health and comfort of the prisoner; and
- (b) remove the mechanical restraint if necessary to allow the prisoner to receive medical treatment.

(4) Replace clauses 12 to 15 and the cross-headings above those clauses with:

Handcuffs

12 Handcuffs for general use must not be fitted so as to impede circulation.

13 Handcuffs for emergency use—

- (a) may be used only in emergency situations and if handcuffs for general use are not available; and
- (b) must be regularly checked to ensure that circulation is not being impeded; and
- (c) must, as soon as practicable, be removed and replaced with handcuffs for general use.

(5) In clause 15A(b), replace “specified in any of paragraphs (a) to (d) of clause 14” with “approved for general use”.

22 Schedule 8 amended

In Schedule 8, form 1A, replace paragraph 1 with:

Hair samples are required to be taken from you under section 124 of the Corrections Act 2004 (the **Act**) because—

- *() (a) you were required under section 124 of the Act to provide a urine sample and failed to provide the sample; or
- *() (b) you were required under section 124 of the Act to provide a urine sample, and the prison manager believes, on reasonable grounds, that the sample you provided is dilute, tainted, or otherwise contaminated; or
- *() (c) you would otherwise be required under section 124 of the Act to provide a urine sample but the officer believes, on

reasonable grounds, that you would fail to provide the urine sample, or that any sample provided would be dilute, tainted, or otherwise contaminated.

*Tick if applicable.

Schedule Schedule 3A inserted

r 19

Schedule 3A Decisions about approval to visit

r 113A

Interpretation

- 1 In this schedule, **decision** means a decision under regulation 91, 92, or 99—
- (a) not to grant approval to a visitor; or
 - (b) to grant approval to a visitor subject to conditions.

Effect of decision

- 2 A decision applies from the day that it is made until—
- (a) a new decision is made under regulation 91, 92, or 99; or
 - (b) the decision is reversed or modified on review.
- 3 While a decision described in—
- (a) clause 1(a) applies, the visitor may be prevented from visiting a prisoner concerned in the prison:
 - (b) clause 1(b) applies, the visitor may only visit a prisoner concerned subject to the conditions imposed.

Review of decision

- 4 The following persons may apply to the chief executive to review a decision:
- (a) a visitor to whom the decision relates;
 - (b) a prisoner to whom written notice of the decision has been given under regulation 113A(3).
- 5 An application to review a decision must be in writing and must state—
- (a) the name of any prisoner to whom it relates; and
 - (b) the applicant's reasons for applying to have the decision reviewed.

- 6 The chief executive must obtain a copy of the decision and review it within 21 days after receiving the application.
- 7 Before reviewing the decision, the chief executive may consult any staff member as the chief executive thinks fit.
- 8 The chief executive may confirm, reverse, or modify the decision.
- 9 The chief executive must, reasonably promptly, notify the following persons in writing of the outcome of the review:
- (a) the proposed visitor:
 - (b) any prisoner concerned.
- 10 Clauses 6 to 9 are subject to clause 11.
- 11 The chief executive may refuse to review a decision if the chief executive is satisfied that—
- (a) the reasons stated by the applicant for applying to have the decision reviewed (however expressed in the application) are substantially the same as the reasons stated by the applicant in relation to a review already undertaken; and
 - (b) there have been no material changes in circumstance since that review.
- 12 Reasonably promptly after refusing to review a decision, the chief executive must notify the visitor and any prisoner concerned in writing.
- 13 Subject to section 10(k) of the Act, the chief executive must not delegate the power to conduct a particular review to the following persons:
- (a) a person who exercised delegated authority to make the original decision:
 - (b) if the original decision was made by a staff member of a prison, any other staff member of the prison.
- 14 The chief executive may refuse to consider a new application for approval, despite regulation 91, 92, or 99 (as the case may be), if the chief executive is satisfied that—
- (a) the application is substantially the same as an application that has previously been denied; and
 - (b) there have been no material changes in circumstance since that application was denied.

Michael Webster,
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 17 September 2017, amend the Corrections Regulations 2005 (the **principal regulations**).

In summary, the amendments—

- provide that prisoners who are suspected of concealing an unauthorised item internally are to be segregated for the purpose of medical oversight, rather than for the purpose of maintaining security, good order, and safety because the main emphasis needs to be on the health of the prisoner:
- replace the lists of specific purposes for which prisoners may be temporarily released or temporarily removed under the Act with a list of more general purposes:
- clarify the duty to notify medical officers in certain cases:
- provide that certain further information may be required in respect of a person proposing to visit, including information relating to any visitor under 18 years of age:
- change the age under which a young visitor to prison is required to be accompanied by an adult. The age is changed from 16 years of age to 18 years of age. The discretion on the part of a prison manager to allow younger persons to visit unaccompanied remains:
- clarify that a prison visitor may be denied approval to visit if it is likely that the visit will adversely affect certain listed matters, including security, welfare, safety, and rehabilitation, and allow conditions or restrictions to be imposed on visits if necessary:
- clarify the relationship between a person being denied approval to visit and being prohibited from visiting:
- provide that a prohibition order may be made if a visit is likely to adversely affect certain listed matters, including security, welfare, safety, and rehabilitation, and that prohibiting the visitor is appropriate or necessary in the circumstances:
- include a process for reviewing a decision denying a non-statutory visitor approval to visit:
- clarify that an officer who has been issued pepper spray may draw or use it at any time while performing the officer's functions in relation to a prisoner and whether inside or outside a prison:
- make it clear that handcuffs may be applied on prisoners who are receiving medical treatment, if the prisoner's temporary removal for the purposes of medical treatment is made subject to a condition to that effect:
- replace the lists of specific types of handcuffs with handcuffs of 2 kinds: handcuffs approved by the chief executive for general use and handcuffs approved

by the chief executive for emergency use. All handcuffs continue to be subject to restrictions on their use:

- provide that a hair sample may be required when an officer believes, on reasonable grounds, that a prisoner would fail to provide a required urine sample or would provide a contaminated sample.

The regulations also make a number of technical and consequential amendments to the principal regulations.

Regulatory impact statement

The Department of Corrections produced a regulatory impact statement on 20 March 2017 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- http://www.corrections.govt.nz/resources/policy_and_legislation/regulatory_impact_statement_corrections_amendment_regulations_2017_2.html
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 17 August 2017.

These regulations are administered by the Department of Corrections.