



Sentencing (Family Violence) Amendment Regulations 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 13th day of May 2019

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 147 of the Sentencing Act 2002 on the advice and with the consent of the Executive Council.

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Regulations

1 Title

These regulations are the Sentencing (Family Violence) Amendment Regulations 2019.

2 Commencement

These regulations come into force immediately after the commencement, on 1 July 2019, of the Family Violence Act 2018.

3 Principal regulations

These regulations amend the Sentencing Regulations 2002 (the **principal regulations**).

4 Regulation 4B amended (Information relating to making of protection order under section 123B of Act to be sent to Family Court)

Replace regulation 4B(2)(b) with:

(b) if the court has made a direction under section 188 of the Family Violence Act 2018, a copy of that direction; and

5 Schedule, form 11AA replaced

In the Schedule, replace form 11AA (as amended by section 259(2) and Part 2 of Schedule 2 of the Family Violence Act 2018) with the form 11AA set out in the Schedule of these regulations.

Schedule

New form 11AA

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Form 11AA Protection order

Section 123B, Sentencing Act 2002

*In the High Court of New Zealand, [*name of registry*] Registry

*In the District Court, [*name of registry*] Registry

*Select one.

No: [*number(s) of proceeding*]

To [*full name, address, occupation*], the offender

The court on [*date*] makes a protection order against you under section 123B of the Sentencing Act 2002.

Person(s) protected by order

This order protects the following person(s) (the **protected person(s)**):

[*full name of person against whom the offence was committed by the offender*]

*[*full name of each child who ordinarily or periodically resides with the person against whom the offence was committed by the offender*], and any other child who ordinarily or periodically resides with the person against whom the offence was committed by the offender.

*Omit if it does not apply.

1 Conditions of order

A Standard conditions: no family violence, no contact, no having others breach order

The offender must not—

- (a) engage in behaviour that amounts to any form of family violence against the protected person (whether physical abuse, sexual abuse, or psychological abuse); or
- (b) make any unauthorised contact with the protected person; or
- (c) encourage a person to engage in behaviour against, or to make contact with, a protected person if the behaviour or contact, if engaged in or made by the offender, would be prohibited by this protection order.

B Exceptions to standard no-contact condition, with consent

The protected person can suspend or reinstate the no-contact condition by giving or cancelling consent to contact.

The protected person's consent is valid only if given in writing or in a digital communication, but the protected person may withdraw consent at any time and in any way.

The protected person cannot consent to any contact inconsistent with—

- (a) any order for supervised contact in relation to a child; or
- (b) no-contact conditions imposed by a direction under section 168A of the Criminal Procedure Act 2011.

C Other exceptions to standard no-contact condition

Contact by the offender with the protected person is authorised, and not in breach of the no-contact condition, if the contact is—

- (a) reasonably necessary in any emergency; or
- (b) permitted under any order or written agreement relating to the role of providing day-to-day care for, or contact with, or custody of—
 - (i) any child (within the meaning of section 8 of the Care of Children Act 2004); or
 - (ii) any child or young person (within the meaning of section 2 of the Oranga Tamariki Act 1989); or
- (c) permitted under any special condition of this protection order; or
- (d) necessary for the purposes of attending a family group conference (within the meaning of section 2 of the Oranga Tamariki Act 1989); or
- (e) necessary to attend any proceeding (of any kind) in or before any court or person acting judicially, or to attend any other matter that is associated with such a proceeding and that is a matter that the parties to the proceeding jointly attend (for example, a restorative justice conference, or a settlement conference convened under section 46Q of the Care of Children Act 2004).

D Standard conditions about weapons

The offender—

- (a) must not possess or have under their control, any weapon; and
- (b) must not hold a firearms licence; and
- (c) must, as soon as practicable after being served with a copy of this order, but in any case no later than 24 hours after such service; and on demand made, at any time, by any constable, surrender to a constable—
 - (i) any weapon in their possession or under their control, whether or not any such weapon is lawfully in their possession or under their control; and
 - (ii) any firearms licence held by them.

On the making of this protection order, any firearms licence held by the offender is deemed to be revoked.

Note: The Family Violence Act 2018 defines a weapon as any firearm, airgun, pistol, prohibited magazine, prohibited part, restricted weapon, ammunition, or explosive, as those terms are defined in the Arms Act 1983.

[Note: If the court has modified the terms of the standard condition relating to weapons, or directed that the standard condition relating to weapons is not a condition of the order (whether absolutely or only to the extent that the order relates to the respondent), set out the terms of the court's decision.]

E Special conditions

The court also imposes the following special conditions on the offender [*set out any special conditions imposed*]:

*Special conditions to protect the protected person from further violence by the offender:

*Special conditions to address the inflicting of family violence against protected people who are particularly vulnerable (for example, due to age, disability, or health condition):

*Person who may consent to contact on behalf of the protected person and to withdraw such consent [*name of person who may consent*]:

*Other [*insert any other special condition*]:

Unless otherwise stated, these conditions last for the duration of this order.

*Omit if it does not apply.

2 Assessment for, and attendance at, non-violence programme/Assessment for prescribed services and engagement with prescribed standard service*

The court directs [*full name of offender*] to undertake an assessment for a non-violence programme, and attend a non-violence programme, provided by a service provider, that an assessor determines is an appropriate non-violence programme for the offender to attend.*

The court directs [*full name of offender*] to undertake an assessment for prescribed services, and engage with any prescribed standard service, provided by a service provider, that an assessor determines may be appropriate for and may benefit the offender.*

The Registrar of the court will arrange for the offender to be referred to an assessor, and the offender must meet with the assessor so that the assessor may—

- (a) undertake an assessment of the offender; and
- (b) determine, if the direction in the notification is that the offender undertake an assessment for a non-violence programme, whether there is an

appropriate non-violence programme, provided by a service provider, for the offender to attend; and

- (c) determine, if the direction in the notification is that the offender undertake an assessment for prescribed services, whether (and, if so, which of) the types of services specified in regulations made under section 249(a) of the Family Violence Act 2018 (if any), provided by a service provider, may be appropriate for and may benefit the offender.

If there is an appropriate non-violence programme for the offender to attend, the service provider of that programme will settle in writing with the offender the terms of attendance, which must include—

- (a) the number of programme sessions that the offender must attend; and
(b) details and arrangements about the programme venue, sessions, and times.

Before providing a prescribed standard service to an offender directed to engage with the service, the service provider must settle in writing with the offender the terms of the offender's engagement with the service.*

*Omit if it does not apply.

Date:

Registrar:

Effect of protection order

This order is a final protection order that lasts indefinitely. Certain conditions of this order may have a limited duration.

Modification or discharge of order

You or the protected person may apply to the Family Court at any time—

- (a) for the modification or discharge of the standard condition about weapons. (The Family Court may make a change to this standard condition only if it is satisfied that the condition, or a term of the condition, is not needed to protect the persons for whose benefit this order applies from further family violence);
(b) for a variation or discharge of any special conditions of this order, or for the imposition of a new special condition;
(c) for this order to be discharged.

You or the protected person may apply to the Family Court for a variation or discharge of a direction to undertake an assessment and attend a non-violence programme or engage with a prescribed standard service, or for such a direction to be made.

Consequences of breach of order

You commit an offence if you breach this order by—

- (a) doing an act in contravention of this order; or
- (b) failing to comply with any condition of this order; or
- (c) contravening, or failing to comply with any term and condition of, a related occupation order (for example, by failing to leave the dwellinghouse to which the order relates); or
- (d) contravening a related tenancy order (for example, by failing to leave the dwellinghouse to which the order relates); or
- (e) contravening, or failing to comply with any term and condition of, a related ancillary furniture order (for example, by preventing possession and use of all or any items to which the order relates); or
- (f) contravening, or failing to comply with any term and condition of, a related furniture order (for example, by preventing possession and use of all or any items to which the order relates).

You have a defence to proceedings for this offence if you can prove that you had a reasonable excuse for breaching the order.

The maximum penalty for this offence is 3 years' imprisonment.

If a constable has good cause to suspect that you have breached this order, you may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

***Consequences of failing to comply with direction**

You commit an offence if, without reasonable excuse, you fail on any occasion to comply with a direction made under section 188 or 198 of the Family Violence Act 2018—

- (a) to undertake an assessment for, and attend, a programme; or
- (b) to undertake an assessment for, or engage with, a prescribed service.

The maximum penalty for this offence is 6 months' imprisonment or a fine not exceeding \$5,000.

*Omit if it does not apply.

Advice

If you need help, consult a lawyer, check the Ministry of Justice website, call the Ministry of Justice call centre, or contact an office of the Family Court immediately.

Ministry of Justice website: <http://www.justice.govt.nz>

Ministry of Justice call centre: 0800 268 787

See also the information sheet accompanying this order.

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 immediately after the commencement, on 1 July 2019, of the Family Violence Act 2018, amend the Sentencing Regulations 2002 (the **principal regulations**). One amendment adjusts regulation 4B of the principal regulations. Regulation 4B applies if a protection order is issued by a sentencing court against an offender under section 123B of the Sentencing Act 2002. Regulation 4B is adjusted so that it requires all directions (for assessments, non-violence programme, and prescribed standard services) made by the sentencing court under section 188 of the Family Violence Act 2018 to be sent to the Family Court. The other amendment replaces form 11AA of the Schedule, which is the form prescribed by the principal regulations for a protection order issued by a court against an offender under section 123B of the Sentencing Act 2002. *New form 11AA* reflects both the Family Violence Act 2018 and the amendments made by the Family Violence (Amendments) Act 2018 to the sections of the Sentencing Act 2002 about protection orders.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 16 May 2019.

These regulations are administered by the Ministry of Justice and the Department of Corrections.