

Reprint
as at 1 October 2018



Returning Offenders (Management and Information) Act 2015

Public Act 2015 No 112
Date of assent 18 November 2015
Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Returning Offenders (Management and Information) Act 2015.

2 Commencement

This Act comes into force on the day on which it receives the Royal assent.

Part 1

Preliminary provisions

3 Purpose

The purpose of this Act is to obtain information from returning offenders and establish release conditions for offenders returning to New Zealand following a prison sentence of more than 1 year in an overseas jurisdiction.

4 Interpretation

(1) In this Act, unless the context otherwise requires,—

1995 Act means the Criminal Investigations (Bodily Samples) Act 1995

chief executive means the chief executive of the Department of Corrections

Commissioner means the Commissioner of Police

constable has the meaning given to it in section 4 of the Policing Act 2008

court means the District Court

Customs place has the meaning given to it in section 5(1) of the Customs and Excise Act 2018

detain, in relation to a person, includes to move the person to a Customs place, Police station, or any other place being used for Police purposes

determination notice means a notice served under section 19

drug or alcohol condition means a special condition under section 15(3)(ba) of the Parole Act (as that provision is applied with all necessary modifications by sections 26(4), 27, and 34 of this Act)

identifying particulars has the same meaning as in section 32(5) of the Policing Act 2008

overseas jurisdiction—

- (a) excludes the islands and territories within the Realm of New Zealand; but
- (b) includes the self-governing state of the Cook Islands, the self-governing state of Niue, Tokelau, and the Ross Dependency

Parole Act means the Parole Act 2002

Police means the New Zealand Police

release condition means a standard release condition or a special condition

relevant sentence means the sentence referred to in section 17(1)(b)

returning offender has the meaning given to it in section 7

returning prisoner has the meaning given to it in section 16

sentence of life imprisonment has the meaning given to it in section 24(3)

special condition means a condition imposed by a court under section 26(1) or 27(1)

standard release condition means a condition that is set out or referred to in section 25.

- (2) In this Act, unless the context otherwise requires, a term that is used but not defined, but that is defined in the Parole Act, has the same meaning as in that Act.

Section 4(1) **Customs place**: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 4(1) **drug or alcohol condition**: inserted, on 15 May 2017, by section 4 of the Returning Offenders (Management and Information) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 87).

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

6 Act binds the Crown

This Act binds the Crown.

Part 2

Returning offenders: management and information

Subpart 1—Returning offenders

7 Who is returning offender

A returning offender—

- (a) is a person who has been convicted in an overseas jurisdiction of an offence for conduct that constitutes an imprisonable offence in New Zealand and, being liable for deportation or removal as a result of that conviction, has returned to New Zealand; and
- (b) includes a returning prisoner.

Taking identifying particulars from returning offenders

8 Purpose of obtaining information for use by Police for any lawful purpose

The purpose of sections 9 to 11 is to enable the Police to obtain information that may be used now or in the future by the Police for any lawful purpose.

Compare: 2008 No 72 ss 32(1), 33(1)

9 Police may request returning offender to provide identifying particulars

The Police may, as soon as is reasonably practicable, request a returning offender to provide identifying particulars and may detain the offender under section 10 if the offender refuses.

10 Police may detain returning offender for purpose of taking identifying particulars

- (1) A constable may, for the purpose of taking the identifying particulars of a returning offender, detain the offender on, or at any time within 6 months after, the offender's return to New Zealand.
- (2) A constable may detain an offender under subsection (1) only for a period that is no longer than is reasonably necessary in the circumstances for a constable to take the identifying particulars of the offender.
- (3) A constable may use reasonable force, if it is necessary, to detain an offender under subsection (1).

Compare: 1996 No 27 s 148A(1), (6)

11 Police may take identifying particulars

A constable may take the identifying particulars of a returning offender who has been detained under section 10 but—

- (a) must do so in a manner that is reasonable in the circumstances; and
- (b) may only use reasonable force that may be necessary to secure those identifying particulars.

Compare: 2008 No 72 s 32(3)

12 Storage, etc, on Police information recording system of identifying particulars

- (1) The identifying particulars of a returning offender that are provided in response to a request under section 9 or otherwise taken under section 11 may be entered, recorded, and stored on a Police information recording system.

- (2) However, photographs or visual images of a returning offender, and impressions of that person's fingerprints, palm-prints, or footprints, that are provided in response to a request under section 9 or obtained under section 11 in error must be destroyed as soon as practicable.
- (3) In subsection (2), **error** includes mistaken identity or mistake as to whether a person meets the criteria for a returning offender.

Compare: 2008 No 72 s 34

13 Offence of failing to comply with constable's direction

- (1) A person who, after being cautioned, fails to comply with a direction of a constable exercising his or her powers under section 10 or 11—
 - (a) commits an offence; and
 - (b) is liable on conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding \$5,000, or to both.
- (2) A person who, in response to a request under section 9 or otherwise under section 11, provides information to the Police knowing that the information is false or misleading in a material particular—
 - (a) commits an offence; and
 - (b) is liable on conviction to imprisonment for a term not exceeding 6 months, to a fine not exceeding \$5,000, or to both.

Compare: 2008 No 72 s 32(4)

Obtaining bodily samples from returning offenders

14 Criminal Investigations (Bodily Samples) Act 1995 applies to certain returning offenders

- (1) For the purpose of obtaining a bodily sample by a databank compulsion notice under Part 3 of the 1995 Act from a returning offender, a constable who is of or above the level of position of inspector may issue a databank compulsion notice requiring the offender to give a bodily sample if—
 - (a) a ground of the offender's removal or deportation to New Zealand was the offender's conviction in an overseas jurisdiction of an offence for conduct that constitutes an imprisonable offence in New Zealand; and
 - (b) that conviction would, if entered in a New Zealand court, be a conviction to which Part 3 of the 1995 Act applies under section 4 of that Act.
- (2) For the purpose stated in subsection (1), Parts 3 to 5 of the 1995 Act apply—
 - (a) with all necessary modifications; and
 - (b) subject to the express modifications set out in section 15.

15 Express modification of Part 3 of 1995 Act

Part 3 of the 1995 Act is modified for the purpose stated in section 14(1) as follows:

- (a) section 39(3)(a) must be read as requiring the notice to be served on, or as soon as is reasonably practicable after, the returning offender's return to New Zealand:
- (b) in sections 39A(3), 39C(2), and 46A(1), a reference to being on parole subject to residential restrictions imposed under section 15 of the Parole Act must be read as a reference to being subject to residential restrictions imposed under section 26 or 27 of the Returning Offenders (Management and Information) Act 2015:
- (c) section 39C(3)(a) does not apply if the returning offender and the constable have agreed that the returning offender give the bodily sample immediately on his or her return to New Zealand:
- (d) section 39C(3)(b) and (4)(b)(ii) must be read as if those provisions referred to 6 months from the date of the returning offender's return to New Zealand:
- (e) in sections 41, 41B, 44, 45, and 47, **appropriate court** means the District Court:
- (f) sections 41(2)(d) and 42(4) do not apply if a returning offender and the constable have agreed that the returning offender give the bodily sample immediately on his or her return to New Zealand:
- (g) section 41(2)(e)(i) and (ii)(B) must be read as if those provisions referred to 6 months from the date of the returning offender's return to New Zealand.

Subpart 2—Returning prisoners

General

16 Who is returning prisoner

A **returning prisoner** is a person who has been determined by the Commissioner to be a returning prisoner in accordance with the criteria set out in section 17.

17 Criteria for determination that person is returning prisoner

- (1) The Commissioner must determine that a person is a returning prisoner if the Commissioner is satisfied that the person—
 - (a) has been convicted in an overseas jurisdiction of an offence for conduct that constitutes an imprisonable offence in New Zealand; and
 - (b) has, in respect of that conviction, been sentenced to—
 - (i) a term of imprisonment of more than 1 year; or

- (ii) 2 or more terms of imprisonment that are cumulative, the total term of which is more than 1 year; and
 - (c) is returning or has returned to New Zealand within 6 months after his or her release from custody during or at the end of the sentence.
- (2) In subsection (1), **release from custody** means release from custody in a prison or, if a person is detained in an immigration or other facility following release from prison, release from that facility.
- (3) To avoid doubt, a person who is released at the end of a prison sentence and has been in the community for more than 6 months is not a returning prisoner, even though he or she is later detained in an immigration or other facility.

Commissioner's determination that person is returning prisoner

18 Time for Commissioner to determine that person is returning prisoner

A determination by the Commissioner that a person is a returning prisoner must not be made later than 6 months after that person's return to New Zealand.

19 Determination notice

- (1) The Commissioner must serve a written notice on a person (**P**) who has been determined to be a returning prisoner.
- (2) The notice must be served,—
 - (a) if practicable, on P's return to New Zealand; or
 - (b) if service on P's return to New Zealand is not practicable, as soon as is reasonably practicable after P's return to New Zealand; but
 - (c) in any event, not later than 6 months after P's return to New Zealand.
- (3) The notice must state the information set out in section 20.

20 Content of determination notice

A determination notice must—

- (a) state that the person named in the notice (**P**) has been determined by the Commissioner to be a returning prisoner for the purposes of this Act; and
- (b) state that P is subject to release conditions under this Act; and
- (c) state the period for which P is subject to release conditions; and
- (d) set out the standard release conditions and any special condition or interim special condition; and
- (e) state that P must report to a probation officer at a probation service centre within 72 hours of service of the notice; and
- (f) provide information about how to contact a probation officer; and

- (g) state that P may be required to provide identifying particulars; and
- (h) explain P's right under section 22 to apply to the Commissioner for a review of the determination; and
- (i) state the grounds on which P may apply for a Commissioner's review; and
- (j) state the time limit for applying for a Commissioner's review; and
- (k) state that P's release conditions are not suspended on account of a Commissioner's review; and
- (l) state that, on the application of the chief executive, a court may impose 1 or more special conditions on P; and
- (m) record the date on which the notice is served and the identity of the person who serves it.

21 Entry to premises to serve determination notice

A court may, on the application of the Commissioner, issue a warrant for entry to any premises where a returning prisoner is reasonably believed to be present if the court is satisfied that a person has refused or refuses to allow the Police to enter those or any other premises in order to prevent or avoid service of a determination notice.

22 Review of Commissioner's determination

- (1) A returning prisoner may apply to the Commissioner to review a determination under section 17 on the ground that—
 - (a) the returning prisoner does not meet 1 or more of the criteria set out in section 17(1); or
 - (b) the determination notice incorrectly states the period for which the returning prisoner is subject to release conditions; or
 - (c) the determination notice was served more than 6 months after a person's return to New Zealand.
- (2) The application must be made within 15 working days after service on the returning prisoner of the determination notice.
- (3) The review must be a factual inquiry only and must be completed within 20 working days after receipt of the application.
- (4) The Commissioner must—
 - (a) give the applicant a reasonable opportunity to state his or her case before the Commissioner makes a decision; and
 - (b) confirm, modify, or revoke the determination notice; and
 - (c) notify the applicant of his or her decision in writing without unreasonable delay.

- (5) Nothing in this section affects the right of a returning prisoner to apply for judicial review of the Commissioner's determination under section 17.

23 Review does not suspend release conditions

An application for a review under section 22 does not affect the operation of the applicant's release conditions, which remain in force during the period of review.

Consequences of determination as returning prisoner

24 Returning prisoner subject to standard release conditions

- (1) A returning prisoner is subject to standard release conditions from the time of service on that person of a determination notice.
- (2) The period for which a returning prisoner is subject to standard release conditions is,—
- (a) if the relevant sentence is imprisonment for a term that is more than 1 year but not more than 2 years, 6 months:
 - (b) if the relevant sentence is imprisonment for a term that is more than 2 years but not more than 5 years, 1 year:
 - (c) if the relevant sentence is imprisonment for a term that is more than 5 years but is not a sentence of life imprisonment, 2 years:
 - (d) if the relevant sentence is a sentence of life imprisonment, 5 years.
- (3) In subsection (2), **sentence of life imprisonment**—
- (a) means an indeterminate sentence under which a person is liable to imprisonment for the rest of his or her life following conviction for an offence; and
 - (b) includes a sentence that is, or corresponds to, a sentence of preventive detention.

25 Returning prisoner must comply with standard release conditions

A returning prisoner must comply with the following conditions (the **standard release conditions**) during the period for which he or she is subject to release conditions:

- (a) the returning prisoner must report to a probation officer at the probation service centre stated in the determination notice as soon as practicable, and not later than 72 hours after service of the determination notice:
- (b) with all necessary modifications, the standard release conditions set out in section 14(1)(b) to (i) of the Parole Act.

Compare: 2002 No 10 s 14(1)

26 Returning prisoner must comply with special conditions imposed by court

- (1) A court may, on the application of the chief executive, impose 1 or more special conditions on a returning prisoner and the returning prisoner must comply with those conditions during the period for which those conditions are imposed.
- (2) A court must not impose a special condition for a longer period than the period for which the standard release conditions apply to the returning prisoner.
- (3) A court must not impose a special condition unless it is designed to—
 - (a) reduce the risk of reoffending by the returning prisoner; or
 - (b) facilitate or promote the rehabilitation and reintegration of the returning prisoner; or
 - (c) provide for the reasonable concerns of victims of the returning prisoner.
- (4) The kinds of special conditions that the court may impose include, without limitation and with all necessary modifications, the conditions set out in section 15(3)(a) to (f) of the Parole Act.
- (5) If a court imposes a special condition that is—
 - (a) an electronic monitoring condition, section 15A of the Parole Act applies with all necessary modifications;
 - (b) a residential restriction, sections 33 to 36 of the Parole Act apply with all necessary modifications;
 - (c) a drug or alcohol condition, sections 16A to 16E, 71A, 72A, and 74A to 74C, and any rules made under section 74A, of the Parole Act apply with all necessary modifications.
- (6) A court must not impose a special condition requiring the returning prisoner to take prescription medicine unless the returning prisoner—
 - (a) has been fully advised, by a person who is qualified to prescribe that medication, about the nature and likely or intended effect of the medication and any known risks; and
 - (b) consents to taking the prescription medication.
- (7) A returning prisoner does not breach his or her conditions for the purposes of section 31(1) if he or she withdraws consent to taking prescription medication.

Compare: 2002 No 10 s 15(1)–(3), (4), (5)

Section 26(5)(c): inserted, on 15 May 2017, by section 5 of the Returning Offenders (Management and Information) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 87).

27 Interim special conditions

- (1) A court may, on the application of the chief executive, impose 1 or more interim special conditions if the court is satisfied that, subject to section 26(3), the imposition of special conditions is immediately necessary from the time that a returning prisoner returns to New Zealand.

- (2) The chief executive may certify that the returning prisoner has a conviction for an offence in respect of conduct that would be a relevant sexual or violent offence for the purpose of Part 1A of the Parole Act in New Zealand, and that 1 or more interim special conditions is immediately necessary for any of the purposes specified in section 26(3), and in that case the court must impose that special condition or conditions unless it is satisfied that they are unnecessary.
- (3) For the purposes of subsections (1) and (2), and to avoid doubt, a court may impose interim special conditions on the information that is then available to the court, even though that information is incomplete or additional information is still being sought.
- (4) The application may be made, and the conditions may be imposed, before or after the returning prisoner returns to New Zealand.
- (5) The application may be made without notice and a court must not require that notice be given.
- (6) Interim special conditions imposed under this section expire after 30 working days after the returning prisoner returns to New Zealand, but a court may extend the expiry of the conditions by a reasonable period to allow an application under section 26(1) to be finally determined.

28 Court may vary or discharge release conditions

- (1) A court may vary or discharge—
 - (a) a special condition, on the application of a returning prisoner or a probation officer;
 - (b) a standard release condition, on the application of a probation officer.
- (2) A court must not discharge a standard release condition with effect from a date that is less than 6 months after the date of service of the determination notice.
- (3) When a probation officer applies for the variation or discharge of a release condition, the probation officer may suspend the condition until the application is determined.

Compare: 2002 No 10 s 56

29 Effect of subsequent sentence of imprisonment

- (1) This section applies when a returning prisoner is—
 - (a) subject to release conditions imposed under this Act; and
 - (b) sentenced to a term of imprisonment in New Zealand beginning before the end of the period for which he or she is subject to release conditions under this Act (the **subsequent sentence**).
- (2) The release conditions imposed under this Act—
 - (a) do not have effect for the period of imprisonment under the subsequent sentence; and

- (b) do not have effect to the extent that release conditions imposed in relation to the subsequent sentence apply; but
- (c) continue to run for purposes of the relevant period in section 24(2).

30 When release conditions end

Release conditions end when—

- (a) the period for which the returning prisoner is subject to release conditions expires; or
- (b) the release conditions are discharged; or
- (c) a public protection order is imposed on the returning prisoner under the Public Safety (Public Protection Orders) Act 2014; or
- (d) an extended supervision order is imposed on the returning prisoner under Part 1A of the Parole Act.

31 Offence to breach release conditions

- (1) A returning prisoner who is subject to a release condition under this Act and who, without reasonable excuse, breaches that condition commits an offence.
- (2) A person who commits an offence under this section is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000.

Compare: 2002 No 10 s 71

Subpart 3—Returning offender who returns to New Zealand more than 6 months after release from custody

32 Who subpart applies to

- (1) This subpart applies to a returning offender who—
 - (a) meets the criteria set out in section 17(1) for a returning prisoner, except that he or she is returning or has returned to New Zealand more than 6 months after his or her release from custody in prison; and
 - (b) was, immediately before his or her return to New Zealand from the relevant overseas jurisdiction, subject to—
 - (i) monitoring, supervision, or other conditions for the relevant sentence; or
 - (ii) conditions imposed under an order in the nature of an extended supervision order or public protection order.
- (2) In subsection (1)(b), **immediately before his or her return to New Zealand** includes, if the offender was in detention immediately before his or her return to New Zealand, immediately before the offender was first so detained.

33 Court may impose conditions on returning offender

- (1) On the application of the chief executive, a court may impose any conditions on a returning offender to whom this subpart applies and must, if it does so, specify when the conditions end.
- (2) The court may impose conditions if it is satisfied that the conditions are—
 - (a) necessary to facilitate the rehabilitation and reintegration of the returning offender; or
 - (b) necessary to reduce the risk of reoffending by the returning offender; or
 - (c) necessary for both purposes in paragraphs (a) and (b).
- (3) The conditions must not be imposed more than 6 months after the returning offender's return to New Zealand.

34 Sections 26 to 31 apply to returning offender to whom this subpart applies

In relation to a returning offender to whom this subpart applies, sections 26 to 31 apply, with all necessary modifications, as if—

- (a) the returning offender were a returning prisoner; and
- (b) the reference in those provisions to a release condition or a special condition were a reference to a condition imposed under section 33(1).

Subpart 4—Amendments to other Acts and review**35 Parole Act 2002 amended**

- (1) This section amends the Parole Act 2002.
- (2) In section 107C(1)(b)(iii), after “New Zealand”, insert “; or”.
- (3) After section 107C(1)(b), insert:
 - (c) has been convicted of a relevant offence and in respect of that offence has been determined to be a returning prisoner under the Returning Offenders (Management and Information) Act 2015:
 - (d) is a person to whom subpart 3 of Part 2 of the Returning Offenders (Management and Information) Act 2015 applies.
- (4) In section 107F(1)(c), after “New Zealand”, insert “; or”.
- (5) After section 107F(1)(c), insert:
 - (d) where the offender is a person described in section 107C(1)(c) or (d), at any time before the end of the period for which the offender is subject to release conditions under the Returning Offenders (Management and Information) Act 2015.

36 Public Safety (Public Protection Orders) Act 2014 amended

- (1) This section amends the Public Safety (Public Protection Orders) Act 2014.
- (2) In section 7(1)(d)(iii), after “New Zealand”, insert “; or”.

(3) After section 7(1)(d), insert:

- (e) the person—
 - (i) has committed a serious sexual or violent offence; and
 - (ii) in respect of that offence,—
 - (A) has been determined to be a returning prisoner under the Returning Offenders (Management and Information) Act 2015; or
 - (B) is a returning offender to whom subpart 3 of Part 2 of that Act applies; and
 - (iii) is subject to release conditions under the Returning Offenders (Management and Information) Act 2015.

37 Review by select committee

A select committee to be determined by the Clerk of the House of Representatives must, 18 months after the commencement of this Act, review the operation of this Act and prepare a report on that review.

Schedule 1

Transitional, savings, and related provisions

s 5

Part 1

Provisions relating to Act as enacted

1 No transitional, savings, or related provisions for Act as enacted

There are no transitional, savings, or related provisions for this Act, as enacted.

Part 2

Provisions relating to Returning Offenders (Management and Information) (Drug and Alcohol Testing) Amendment Act 2016

Schedule 1 Part 2: inserted, on 15 May 2017, by section 6 of the Returning Offenders (Management and Information) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 87).

2 Interpretation

In this Part,—

commencement date means the date on which the Returning Offenders (Management and Information) (Drug and Alcohol Testing) Amendment Act 2016 comes into force

pre-commencement drug or alcohol condition means a condition—

- (a) that is imposed before the commencement date under section 26(1), 27(1), or 33(1); and
- (b) that prohibits a returning offender from doing 1 or more of the following:
 - (i) using (as defined in section 4(1) of the Parole Act) a controlled drug;
 - (ii) using a psychoactive substance;
 - (iii) consuming alcohol.

Schedule 1 clause 2: inserted, on 15 May 2017, by section 6 of the Returning Offenders (Management and Information) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 87).

3 Testing and monitoring of returning offender subject to pre-commencement drug or alcohol condition

- (1) This clause applies if a returning offender is subject to a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, sections 16B to 16E, 71A, 72A, 74A, and 74B, and any rules made under section 74A, of the Parole Act apply in respect of the returning offender—

- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and
- (b) as if the court had complied with section 16A(3) of the Parole Act in respect of the condition.

Schedule 1 clause 3: inserted, on 15 May 2017, by section 6 of the Returning Offenders (Management and Information) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 87).

Reprints notes

1 *General*

This is a reprint of the Returning Offenders (Management and Information) Act 2015 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Returning Offenders (Management and Information) (Drug and Alcohol Testing) Amendment Act 2016 (2016 No 87)