



# Misuse of Drugs (Drug and Substance Checking Service Providers) Regulations 2022

Cindy Kiro, Governor-General

## Order in Council

At Wellington this 4th day of April 2022

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 37 and 37B of the Misuse of Drugs Act 1975—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Health.

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## Regulations

### 1 Title

These regulations are the Misuse of Drugs (Drug and Substance Checking Service Providers) Regulations 2022.

### 2 Commencement

These regulations come into force on 5 May 2022.

### 3 Interpretation

In these regulations, unless the context otherwise requires,—

**Act** means the Misuse of Drugs Act 1975

**licence** means a licence to be a drug and substance checking service provider issued under clause 4 of Schedule 6 of the Act.

### 4 Transitional, savings, and related provisions

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

## Part 1

### Licence applications, renewals, and other matters

#### *Licence applications*

### 5 Information that must be included in or accompany licence application

- (1) An application for a licence must include or be accompanied by the following information:
  - (a) the name and contact details of the applicant; and
  - (b) if the applicant is an entity,—
    - (i) the name and contact details of the individual who is the contact person for the entity; and
    - (ii) the name of every responsible person of the entity; and
    - (iii) the results of a criminal record check that complies with subclause (2) for each of the entity's responsible persons; and
    - (iv) a description of any activities other than drug checking activities that will be, or are likely to be, carried out by the entity during the term of the licence; and
  - (c) if the applicant is an individual, the results of a criminal record check for the individual that complies with subclause (2); and
  - (d) if the applicant or any responsible person has a relevant conviction or is aware that they have a record of relevant non-compliance, an explan-

- ation of why the applicant is suitable to hold a licence despite that conviction or record of non-compliance; and
- (e) a description of the proposed service model, including a description of—
    - (i) the locations or types of locations where the applicant will carry out drug checking activities; and
    - (ii) the methods that the applicant will use to test drugs and substances; and
    - (iii) how the applicant will dispose of drugs and substances that are surrendered to them; and
  - (f) a description of how the applicant will store the controlled drugs and psychoactive substances that are in the applicant's possession; and
  - (g) examples of the documents or recordings that the applicant will use to train the workers who will carry out the applicant's drug checking activities; and
  - (h) examples of the information and harm reduction advice that the applicant will provide to help individuals make informed decisions about drug and substance use; and
  - (i) a description of—
    - (i) the risks (if any) to the personal privacy of individuals who do 1 or both of the following:
      - (A) present drugs or substances to the applicant for checking; or
      - (B) surrender drugs or substances to the applicant for disposal; and
    - (ii) how the applicant will mitigate those risks; and
    - (iii) the other measures (if any) that the applicant has taken, or will take, for the purpose of complying with the applicant's obligations under the Privacy Act 2020.
- (2) The results of a criminal record check required by this regulation must be a record obtained from the Ministry of Justice that is dated no earlier than 3 months before the date of the application.
- (3) In this regulation,—
- drug checking activities** means activities carried out in performing 1 or more of the functions specified in section 35DB of the Act
- harm reduction advice** means advice of the kind required by section 35DDF of the Act
- relevant conviction** means a conviction for—
- (a) an offence against the Act, the Psychoactive Substances Act 2013, or the Medicines Act 1981 (or any regulations made under any of those Acts); or

- (b) a crime involving dishonesty (as defined in section 2(1) of the Crimes Act 1961)

**relevant non-compliance** means a serious or repeated failure to comply with any requirement of the Act or its regulations.

### *Licence renewals*

#### **6 Application to renew licence**

A service provider may apply to the Director-General of Health to renew the service provider's licence.

#### **7 Existing licence continues if application to renew made within specified period**

A service provider's licence continues in force until their application for renewal is decided if they apply for the renewal no earlier than 90 days, and no later than 30 days, before their licence expires.

#### **8 Director-General of Health may request information, etc**

- (1) The Director-General of Health may request an applicant for a licence renewal to supply particulars, information, documents, or other material before deciding whether to renew the licence.
- (2) An application lapses if the further particulars, information, documents, or other material requested is not supplied within—
- (a) 30 days after the date of the request; or
  - (b) any further time that the Director-General of Health may allow by written notice to the applicant.

#### **9 Decision on application to renew licence**

- (1) The Director-General of Health may renew a licence if satisfied that the criteria set out in clause 4(1) of Schedule 6 of the Act are met.
- (2) In considering whether the criteria are met, the Director-General of Health—
- (a) must have regard to—
    - (i) the changes (if any) in the applicant's circumstances since the most recent decision to issue or renew the applicant's licence; and
    - (ii) the applicant's record of compliance with the Act, its regulations, and the conditions of the applicant's licence; and
    - (iii) any other information that the Director-General considers relevant; and
  - (b) may assume that the criteria are met in the absence of evidence to the contrary.

- (3) If the Director-General of Health decides to decline an application, the Director-General must give the applicant written notice of the decision and the reasons for it.

#### **10 Review of decision on application to renew licence**

- (1) An applicant for a licence renewal may apply for a review of a decision to decline to renew the applicant's licence.
- (2) The applicant must apply to the Director-General of Health before the close of the 14th day after the day on which they receive written notice of the decision.
- (3) The Director-General of Health must make a decision on the application for review by following the process set out in clause 12 of Schedule 6 of the Act (which applies as if the application for review were made under clause 11 of that schedule).

#### *Drug information body*

#### **11 National Drug Intelligence Bureau is drug information body**

The National Drug Intelligence Bureau is the drug information body for the purposes of section 35DDI of the Act.

## **Part 2 Licence conditions**

### *General licence conditions*

#### **12 General licence conditions set out in regulations 13 to 18**

- (1) Regulations 13 to 18 set out conditions that apply to every service provider's licence.
- (2) The conditions set out in those regulations are in addition to the conditions set out in sections 35DDB to 35DDK of the Act.

#### **13 Service provider must assess, and maintain or improve, accessibility**

- (1) A service provider must,—
  - (a) at reasonable intervals, assess the extent to which their services are accessible to people with disabilities; and
  - (b) to the extent practical, improve or maintain the accessibility of the services for those people.
- (2) In this regulation, **services** means services provided in performing the functions of a service provider that are specified in section 35DB(1)(a) to (d) of the Act.

**14 Service provider must provide drugs or substances to National Drug Intelligence Bureau on request**

A service provider must, on request, provide drugs or substances to the National Drug Intelligence Bureau for testing.

**15 Service provider must not store controlled drugs or psychoactive substances on residential premises**

A service provider must not store controlled drugs or psychoactive substances on residential premises (as defined in section 2(1) of the Residential Tenancies Act 1986).

**16 Service provider must notify Director-General of Health of change in responsible persons**

- (1) A service provider that is an entity must give the Director-General of Health written notice of any change in the responsible persons of the service provider.
- (2) The service provider must give the notice—
  - (a) before the change occurs; or
  - (b) as soon as is reasonably practicable (but, in any case, no later than 30 days) after the change occurs.

**17 Service provider must provide records to Director-General of Health on or before surrender of licence**

- (1) This regulation applies to a service provider who surrenders their licence under clause 10 of Schedule 6 of the Act.
- (2) On or before giving the written notice required by that clause, the service provider must provide the Director-General of Health with all records that—
  - (a) they are required to keep under their licence conditions; and
  - (b) they have not yet provided to the Director-General.

**18 Service provider must retain records for 1 year unless otherwise specified**

A service provider must retain a record for 1 year after the record is created if their licence conditions—

- (a) require the service provider to keep the record; and
- (b) do not specify a period for which the record must be retained.

*Prescribed periods for condition in section 35DDJ of Act*

**19 Periods for which service provider must retain records under section 35DDJ of Act**

For the purposes of section 35DDJ(4) of the Act, a record that is kept under a provision listed in the first column of the following table must be retained for the period described in the second column of the table:

<b>Provision under which record must be kept</b>	<b>Period for which record must be retained</b>
Section 35DDJ(1)(a) and (b) (record of number of tests carried out and the number of individuals advised of test results)	1 year after the record is reported to the Director-General of Health and the drug information body under section 35DDI of the Act
Section 35DDJ(1)(c) (record about each drug or substance that is tested and returned)	1 year after the record is created
Section 35DDJ(1)(d) and (e) (record about each drug or substance in the service provider's possession)	1 year after the drug or substance ceases to be in the service provider's possession

### Part 3

#### Amendments to Misuse of Drugs Regulations 1977

#### 20 Principal regulations

Regulations 21 and 22 amend the Misuse of Drugs Regulations 1977.

#### 21 Regulation 28 amended (Custody of controlled drugs)

Revoke regulation 28(4)(f) and (4AAA).

#### 22 New regulation 52A inserted (Application of regulations to drug and substance checking service providers and their users)

After regulation 52, insert:

##### 52A Application of regulations to drug and substance checking service providers and their users

- (1) Regulations 23, 25, 28, 38, 47, 51, and 52 do not apply to a drug and substance checking service provider that is acting in the course of performing the service provider's functions.
- (2) Regulations 23, 25, and 47 do not apply to an individual who is doing 1 or both of the following:
  - (a) supplying a controlled drug to a service provider for the purpose of checking;
  - (b) surrendering a controlled drug to a service provider for the purpose of disposal.
- (3) Subclause (1) is subject to the conditions of the service provider's licence.

## Schedule 1

### Transitional, savings, and related provisions

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#### Part 1

##### Provisions relating to these regulations as made

There are no transitional, savings, or related provisions in these regulations as made.

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 provide for matters relating to drug and substance checking service providers (**service providers**), who are licensed under Schedule 6 of the Misuse of Drugs Act 1975 (the **Act**). The regulations come into force on 5 May 2022.

In particular, these regulations—

- prescribe information that must be included in or accompany an application for a licence to be a service provider (*see regulation 5*):
- provide for the renewal of licences (*see regulations 6 to 10*):
- specify the National Drug Intelligence Bureau as the drug information body that service providers must report data to under section 35DDI of the Act (*see regulation 11*):
- prescribe licence conditions that require service providers to—
  - assess, and maintain or improve, accessibility for people with disabilities (*see regulation 13*):
  - provide drugs or substances to the National Drug Intelligence Bureau on request (*see regulation 14*):
  - not store controlled drugs or psychoactive substances on residential premises (*see regulation 15*):
  - notify the Director-General of Health of changes in the responsible persons of the service provider (*see regulation 16*):
  - provide records to the Director-General of Health on or before surrendering the service provider's licence (*see regulation 17*):
  - retain records for 1 year, unless the service provider's licence conditions specify a different period (*see regulation 18*):

- prescribe the periods for which service providers must retain the records required by section 35DDJ of the Act (*see regulation 19*).

These regulations also amend the Misuse of Drugs Regulations 1977 to disapply provisions of those regulations where it would be impractical or inappropriate for them to apply to service providers or their users (*see regulations 20 to 22*).

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 7 April 2022.

These regulations are administered by the Ministry of Health.