



Corrections Amendment Regulations 2011

Anand Satyanand, Governor-General

Order in Council

At Wellington this 22nd day of August 2011

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 2011.

2 Commencement

These regulations come into force 28 days after the date of their notification in the *Gazette*.

3 Principal regulations amended

These regulations amend the Corrections Regulations 2005.

4 Interpretation

- (1) Regulation 3 is amended by inserting the following definition in its appropriate alphabetical order:
 - “**hair sample** means a sample of hair that is—
 - “(a) at least 20 mm long; and
 - “(b) approximately 7 mm thick”.
- (2) The definition of **designated collection officer** in regulation 3 is amended by adding “and hair samples”.
- (3) Paragraph (a) of the definition of **specified laboratory** in regulation 3 is amended by inserting “or hair” after “urine”.

5 Application

Regulation 4 is amended by adding the following subclauses:

- “(4) In the case of a corrections prison that is a contract prison, any power, function, or duty of the chief executive described in

regulations 59(2) and (3), 60 (2) and (3), 61(2) and (3), 157(2) and (3), 180(1) and (2), and 186(3)—

“(a) may be exercised by an approved employee to the extent of the approval given by the chief executive; but

“(b) must be exercised by the chief executive if there is no approved employee to exercise that power, function, or duty, or the approved employee is absent or unable to exercise that power, function, or duty.

“(5) In subclause (4), an **approved employee** means a person who—

“(a) is employed by a contractor but not as a staff member of any prison; and

“(b) has been given written approval by the chief executive to exercise any power, function, or duty of the chief executive in respect of 1 or more of the regulations referred to in subclause (4).”

6 Classes of prisoners who may be temporarily released under section 62

Regulation 26(1)(a)(ii) is amended by inserting “or third” after “second”.

7 When security classification is assigned

Regulation 46 is amended by inserting “or prison manager” after “chief executive” in each place where it appears.

8 When review of security classification is completed

Regulation 49 is amended by inserting “or prison manager” after “chief executive” in each place where it appears.

9 Prison to have health centre

Regulation 71(4) is amended by inserting “or prison manager” after “chief executive”.

10 Duties of medical officer

Regulation 73 is amended by inserting the following subclause after subclause (2):

“(2A) Without limiting subclause (1), a medical officer of a contract prison must, if a contractor requires or the medical officer considers it necessary in the circumstances, advise the contractor of the equipment, supplies, facilities, and personnel required—

- “(a) to equip and operate the health centre adequately; and
- “(b) to provide for the health needs of prisoners adequately.”

11 Medical officer may refer prisoner to health service provider

Regulation 77(5)(a) is amended by inserting “or manager” after “chief executive”.

12 Private visitors to be approved before visit

- (1) Regulation 99(1)(a) is amended by inserting “or contractor, in the case of a contract prison” after “chief executive”.
- (2) Regulation 99(2) is amended by inserting “or contractor, in the case of a contract prison” after “chief executive”.

13 Prisons to have pre-approval system for private visitors

Regulation 100 is amended by adding the following subclause as subclause (2):

- “(2) A contractor must ensure that each contract prison that he or she manages has in place a system by which private visitors may—
- “(a) apply for the contractor’s approval as an approved visitor to a prisoner; and
 - “(b) be allowed to visit the prisoner or obtain the contractor’s approval before the day of the visit.”

14 Prison visitors may be asked to give information

Regulation 101(1) is amended by inserting “or a contractor” after “chief executive”.

15 Prescribed circumstances for use of handcuffs and waist restraints

- (1) Regulation 125(1) is amended by inserting “or waist restraints used in conjunction with handcuffs” after “Handcuffs”.

- (2) Regulation 125(1)(b) is amended by omitting “moving” and substituting “escorting”.
- (3) Regulation 125(2) is revoked.

16 Reporting use of mechanical restraint

Regulation 127(1) is amended by inserting “(whether inside or outside a prison)” after “prisoner” in the second place where it appears.

17 Heading amended

The heading above regulation 130 is amended by adding “: *Urine samples*”.

18 Collection kit

- (1) Regulation 136 is amended by omitting the heading and substituting the following heading: “**Urine sample collection kit**”.
- (2) Regulation 136 is amended by inserting “urine sample” before “collection kit” in each place where it appears.

19 Procedure immediately after provision of sample

Regulation 139(3) and (4) are amended by inserting “urine sample” before “collection kit” in each place where it appears.

20 Chain of evidence for urine sample

Regulation 140 is amended by inserting “urine sample” before “collection kit” in each place where it appears.

21 Certificate showing result of analysis

Regulation 141 is amended by inserting “urine sample” before “collection kit”.

22 Requirements before result of sample analysis can be used in proceedings

Regulation 143(d) is amended by revoking subparagraph (ii) and substituting the following subparagraph:

- “(ii) to have the sample independently analysed and the prisoner has been given—

- “(A) 14 days after the close of the day on which the 48 hours expires to pay for and dispatch the sample for independent analysis; and
- “(B) 21 days after the close of the day on which the 48 hours expires to produce the result of the independent analysis; and”.

23 New heading and regulations 143A to 143M inserted

The following heading and regulations are inserted after regulation 143:

“Procedure for drug and alcohol testing: Hair samples

“143A Hair samples may be required

- “(1) The taking of hair samples is a procedure to which a prisoner may be required to submit, under section 124 of the Act, for the purpose of detecting whether the prisoner has used drugs, or consumed alcohol, or both.
- “(2) Regulations 143B to 143M apply to the taking, collection, handling, analysis, and evidential use of hair samples required to be provided under section 124 of the Act.

“143B When hair samples may be taken

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

- “(a) the prisoner is required under section 124 of the Act to provide a urine sample and fails to provide the sample because of a reasonable excuse; or
- “(b) the prisoner is required under section 124 of the Act to provide a urine sample and the prison manager believes, on reasonable grounds, that the sample provided is dilute, tainted, or otherwise contaminated; or
- “(c) the prisoner is required under section 124 of the Act to provide a urine sample and the prison manager believes, on reasonable grounds, that the prisoner has committed an offence against section 129(b) of the Act by refusing to provide the sample, or failing, without reasonable excuse, to provide the sample; or

- “(d) the prison manager believes, on reasonable grounds, that the prisoner has committed an offence against section 129(c) of the Act by tampering with a urine sample required to be provided (whether by that prisoner or any other prisoner) under section 124 of the Act.

“143C Hair samples to be taken at reasonable time

The taking of hair samples from a prisoner detained in any prison must be done only at a reasonable time unless the manager, or any other staff member authorised for the purpose by the manager, believes, on reasonable grounds, that the prisoner has committed an offence against section 129 or 130 of the Act.

“143D Identifying prisoners

A designated collection officer who is required to take hair samples from a prisoner must, after the prisoner is taken to the designated sample collection area,—

- “(a) positively identify the prisoner, either—
 - “(i) through personal knowledge of the prisoner; or
 - “(ii) by an identification photograph; and
- “(b) verify the prisoner’s PRN or driver’s licence number.

“143E Information to be given to prisoner before hair samples taken

Before taking hair samples from a prisoner, the designated collection officer who is required to take the samples must—

- “(a) inform the prisoner verbally of the information contained in form 1A of Schedule 8; and
- “(b) ask the prisoner to sign that form; and
- “(c) give a copy of that form to the prisoner.

“143F Taking of hair samples

- “(1) The designated collection officer must, subject to subclause (2), take 2 samples of hair from the prisoner’s head.
- “(2) If it is not possible to take 2 samples from the prisoner’s head,—

- “(a) the designated collection officer must take 2 samples of hair from another part of the prisoner’s body; and
 - “(b) both samples must be taken from the same part of the prisoner’s body.
- “(3) The designated collection officer must take the hair samples by using the cutting instrument provided in the collection kit to cut the hair from the prisoner’s head or, if the case requires, from another part of the prisoner’s body.
- “(4) The taking of hair samples from a prisoner detained at a prison must be done under the supervision, and in the direct view, of an officer or another designated collection officer.
- “(5) If hair samples are not to be taken from the prisoner’s head,—
- “(a) the samples must be taken by a designated collection officer of the same sex as the prisoner; and
 - “(b) the officer or designated collection officer supervising the taking of the samples must be of the same sex as the prisoner; and
 - “(c) the samples must be taken in a manner that affords the greatest degree of privacy and dignity consistent with the purpose of taking the samples.
- “(6) The designated collection officer must take hair samples from the prisoner with decency and sensitivity.
- “(7) Subclause (5) does not prevent the presence, when the hair samples are or are to be taken, of any number of additional officers (whether designated collection officers or not) if the manager of a prison believes, on reasonable grounds, that they are needed for the proper supervision and management of the prisoner.

“143G Hair sample collection kit

- “(1) A designated collection officer who is required to take hair samples from a prisoner must ensure that he or she uses a hair sample collection kit provided by a specified laboratory.
- “(2) Only 1 hair sample collection kit may be in the area designated by the manager for the purpose of hair sample collection at any one time.
- “(3) The designated collection officer must check that the collection kit contains the following items:

- “(a) 2 sample envelopes:
 - “(b) 2 hair sample transport devices:
 - “(c) 2 tamper-proof sample envelope security labels:
 - “(d) a plastic specimen bag:
 - “(e) a disposable cutting instrument for taking the hair samples:
 - “(f) a collection kit shipping seal.
- “(4) If a collection kit does not contain all the items listed in subclause (3), it may not be used.

“143H Inspection of equipment by prisoner

A designated collection officer who is required to take hair samples from a prisoner must, before taking the hair samples, show the hair sample collection kit to the prisoner in a manner that enables the prisoner to verify that the collection kit contains only the items listed in regulation 143G(3).

“143I Procedure immediately after hair samples taken

- “(1) Immediately after hair samples are taken from a prisoner, a designated collection officer must, in the presence of the prisoner,—
- “(a) secure each hair sample into a separate hair sample transport device; and
 - “(b) place each hair sample transport device into a separate sample envelope; and
 - “(c) seal each sample envelope; and
 - “(d) write on each sample envelope the prisoner’s PRN (or other identifying information as recorded on Part A of form 2A of Schedule 8) and the name of the designated collection officer who took the sample or the person who supervised that officer taking the sample; and
 - “(e) allow each sample envelope to be initialled by the prisoner from whom the samples were taken (if the prisoner wishes to do so).
- “(2) Immediately after the samples have been labelled, a designated collection officer must—
- “(a) complete Part A of form 2A of Schedule 8, in the presence of the prisoner; and
 - “(b) give the prisoner an opportunity to sign it; and

- “(c) place the laboratory copy of the form into the specimen bag; and
 - “(d) give a copy of the form to the prisoner; and
 - “(e) place the 2 sealed and labelled envelopes into the specimen bag; and
 - “(f) seal the specimen bag with the shipping seal provided in the hair sample collection kit; and
 - “(g) place the specimen bag in secure storage designated for storing hair samples.
- “(3) A specimen bag that is placed in secure storage under subclause (2)(g) must remain there until it is collected for transportation to a specified laboratory.

“143J Chain of evidence for hair samples

- “(1) The manager of a prison must ensure that a specimen bag containing hair samples is delivered to a specified laboratory reasonably promptly after the procedure set out in regulation 143I has been completed.
- “(2) An officer who removes a specimen bag from secure storage and places it in a secure courier bag must sign form 3 of Schedule 8 and state on that form—
- “(a) the number of the specimen bag; and
 - “(b) the date and time that the specimen bag was removed from secure storage; and
 - “(c) the time that the courier bag was locked.
- “(3) If the officer locking the secure courier bag is not the officer referred to in subclause (2), the officer locking the bag must also sign the form.
- “(4) A person who collects a specimen bag from a prison for transportation to a specified laboratory must sign the form and state—
- “(a) his or her name; and
 - “(b) the date and time of the collection of the specimen bag.

“143K Certificate showing result of analysis

After analysis of hair samples delivered in a specimen bag to a specified laboratory under regulation 143J, an analyst from that laboratory must complete and send to the manager of the

prison concerned a certificate showing the result of the analysis.

“143L Copy of certificate containing result of sample analysis to be given to prisoner and others

On receipt of the certificate referred to in regulation 143K, the manager of a prison must ensure that—

- “(a) copies are given—
 - “(i) to the prisoner from whom the hair samples were taken; and
 - “(ii) if the result is positive, to a medical officer, or a staff member who is a nurse, for the purpose set out in regulation 143M(e); and
- “(b) a copy is placed on the prisoner’s prison record.

“143M Requirements before result of sample analysis can be used in proceedings

The result of the analysis of a hair sample may only be used as evidence in any disciplinary hearing if—

- “(a) the appropriate chain of evidence forms have been completed; and
- “(b) an analyst from the specified laboratory that analysed the sample has certified in writing that—
 - “(i) the result was positive; or
 - “(ii) there is evidence that the sample has been tampered with or contaminated in any way; and
- “(c) after receiving a copy of the analyst’s certificate and before the commencement of the hearing, the prisoner has been—
 - “(i) advised of the right to have the sample independently analysed at the prisoner’s own expense; and
 - “(ii) given 48 hours to elect to have the sample independently analysed; and
- “(d) within that 48 hours the prisoner has elected—
 - “(i) not to have that sample independently analysed; or
 - “(ii) to have the sample independently analysed and the prisoner has been given—

- “(A) 14 days after the close of the day on which the 48 hours expires to pay for and dispatch the sample for independent analysis; and
- “(B) 21 days after the close of the day on which the 48 hours expires to produce the result of the independent analysis; and
- “(e) a medical officer, or a staff member who is a nurse, has certified, in writing, that any drug found in the prisoner’s sample was not, to the best of his or her knowledge, administered to the prisoner in accordance with instructions from a health service provider or a medical officer.”

24 Requirements for random testing programmes

Regulation 147(c)(ii) is amended by inserting “or, if regulation 143B applies, hair samples” after “urine sample”.

25 Record of drug and alcohol testing to be kept

Regulation 149(1)(a) is amended by inserting “or, if regulation 143B applies, hair samples” after “urine sample.”

26 Approval for daily visits from baby

Regulation 175(1) and (2) are amended by omitting “9” and substituting in each case “24”.

27 Young and adult prisoners to be kept apart

Regulation 179(2) is amended by omitting “regulation 180” and substituting “regulations 179A and 180”.

28 New regulation 179A inserted

The following regulation is inserted after regulation 179:

“179A Young and adult prisoners not to be transported in same vehicle compartment

A prisoner, including any accused prisoner, under the age of 18 years must not be transported in a vehicle compartment in which there is a prisoner who is 18 years old or older.”

29 Chief executive may approve mixing of young and adult prisoners

Regulation 180 is amended by adding the following subclause:

- “(3) This regulation is subject to regulation 179A.”

30 Schedule 7 amended

- (1) Clause 8(d) of Schedule 7 is amended by inserting “or hair samples” after “urine sample”.
- (2) Clause 13(b) of Schedule 7 is amended by inserting “or hair samples” after “urine sample”.
- (3) Clause 41(c) of Schedule 7 is amended by inserting “or hair samples” after “urine sample”.

31 Form 1 of Schedule 8 amended

- (1) The words under the heading “**Voluntary participant**” in paragraph 1 of form 1 of Schedule 8 are amended by omitting “, aimed at reducing” and substituting “that has as one of its aims the reduction of”.
- (2) Form 1 of Schedule 8 is amended by inserting the following paragraph after paragraph 17:
“(17A) You will have 14 days (after the close of the day on which the 48 hours expires) to arrange and pay for sample B to be tested independently.”
- (3) Paragraph 14 of form 1 of Schedule 8 is amended by omitting “and/or” and substituting “or”.

32 Form 2 of Schedule 8 amended

Form 2 of Schedule 8 is amended by omitting “hereby” from the words of acknowledgment by the prisoner.

33 New form 1A inserted into Schedule 8

Schedule 8 is amended by inserting the form 1A set out in the Schedule of these regulations after form 1.

34 New form 2A inserted into Schedule 8

Schedule 8 is amended by inserting the form 2A set out in the Schedule of these regulations after form 2.

35 Form 3 of Schedule 8 amended

- (1) The form 3 heading in Schedule 8 is amended by omitting “r 140” and substituting “rr 140, 143J(2)”.
 - (2) Columns 1 and 2 of form 3 of Schedule 8 are amended by omitting “fridge” and substituting in each case “secure storage”.
 - (3) Column 4 of form 3 of Schedule 8 is amended by inserting “or specimen bag” after “Collection kit”.
-

Schedule
New forms 1A and 2A inserted in
Schedule 8

r 33, 34

Form 1A
Information to prisoner supplying hair samples
Section 124, Corrections Act 2004

r 143E

Name:

PRN:

Driver licence No:

- 1 Hair samples are required to be taken from you under section 124 of the Act because—
- *(a) you were required under section 124 of the Act to provide a urine sample and failed to provide the sample because of a reasonable excuse; 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 were required under section 124 of the Act to provide a urine sample and the prison manager believes, on reasonable grounds, that you have committed an offence against section 129(b) of the Act by—
 - refusing to provide the sample; or
 - failing, without reasonable excuse, to provide the sample; or
 - *(d) the prison manager believes, on reasonable grounds, that you have committed an offence against section 129(c) of the Act by tampering with a urine sample required to be provided (whether by you or any other prisoner) under section 124 of the Act.
- *Tick if applicable.
- 2 The samples will be taken by a designated collection officer in the presence of a designated collection officer or staff member.
- 3 Two samples of hair will be taken from you, each around 7 mm thick and about the width of an HB pencil and at least 20 mm long.

Form 1A—*continued*

- 4 Both hair samples will be cut from your head where possible and as close to the scalp as possible.
- 5 If sufficient hair samples cannot be taken from your head, both samples will be taken from another part of your body in accordance with the procedure set out in the regulations.
- 6 You may also be required to submit to a search for the purpose of detecting any agent or substance that might be used to tamper with a sample (for example by adulteration or substitution of the sample).
- 7 Any attempt to adulterate a sample or substitute another sample could result in a charge under section 128 or 129 of the Act (disciplinary offence).
- 8 Failing to allow an adequate sample to be taken from you could result in a charge under section 128 or 129 of the Act of refusing or failing to submit to a test (disciplinary offence).
- 9 The penalties for tampering with a sample or for failing or refusing to submit to a test are the same as the penalties for a positive test.
- 10 The prisoner hair sample form (form 2A) will be completed in your presence. You will be asked to sign that form, and you will be given a copy.
- 11 The 2 samples will be sent to a laboratory where sample A will be tested.
- 12 You will be given a copy of the test result for sample A.
- 13 You may be charged with an offence against discipline under section 128 or 129 of the Act if your sample proves positive for drugs or alcohol unless it is found that you were authorised to use a drug or consume alcohol by a medical officer.
- 14 Sample B will be retained by the laboratory in case you want to have an independent test done because you do not agree with the results of the test done on sample A.
- 15 You will have 48 hours after being advised of the results of the test done on sample A to elect to have sample B tested independently.
- 16 You will have to pay in advance for sample B to be tested. You will only be reimbursed if the sample B test results do not uphold the sample A results.

Form 1A—*continued*

- 17 You will have 14 days after the close of the day on which the 48 hours expires to pay for and dispatch sample B.
- 18 You will have 21 days (after the close of the day on which the 48 hours expires) to produce the result of the sample B tests.

Signature of prisoner:

Date:

Prisoner copy:

CPO copy:

Form 2A

r 143I

**Prisoner hair sample form
(Part A)**

Prisoner PRN No:

Prison ID:

Specimen identification No: [*number allocated by laboratory to sample envelopes*]**Name of person taking hair samples**

Name:

Signature:

Designation:

Name of person supervising taking of samples

Name:

Signature:

Designation:

Hair samples

Date provided by prisoner:

Time:

Reason to test:

Acknowledgement by prisoner

I acknowledge that the hair samples accompanying this form are my own.

Signature of prisoner:

Specimen bag packed and checked by:

Name:

Signature:

To laboratory: test requestedCore drug screen: [*name*]

Form 2A—*continued*Other: *[specify]*Specimen receipt at laboratory
(Part B)**Laboratory reference No:**Specimen bag received/seal broken and contents checked by: *[name]*

Date:

Signature:

Reject sample if any of the following apply:

- *() Sample ID on form and envelopes do not match
- *() Sample unlabelled
- *() Signature of supervisor omitted from sample envelope, security labels, or this form
- *() Sample envelope security label broken or shows evidence of tampering
- *() Sample shows obvious adulteration
- *() Sample amount is insufficient

*Tick if applicable.

Reason sample handled	Released by: signature—print name	Received by: signature—print name	Date

Sample AAnalysis is completed by *[name, date]*Result forwarded to prison by *[name, date]*Residue of sample destroyed by *[name, date]*

Form 2A—*continued***Sample B** (to be completed for positive results)

Sample stored on [date]

Upon prisoner's request, sample dispatched to [name of laboratory]
for independent analysis

Residue of sample destroyed (after 6 months) by [name], [date]

Rebecca Kitteridge,
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 28 days after the date of their notification in the *Gazette*, amend the Corrections Regulations 2005 (the **principal regulations**).

The main changes made by these regulations are as follows:

- certain powers, duties, and functions of the chief executive relating to the approval of prison facilities and cells, the mixing of young and adult prisoners, and separation of accused prisoners will, in respect of a contract prison, be able to be exercised by an employee of the contractor (other than a staff member of a prison) who is approved by the chief executive for the purpose:
- the powers, duties, and functions of the chief executive relating to the approval of private visitors to a prison may be exercised by a contractor in respect of a contract prison:
- a prison manager may (as well as the chief executive) make decisions relating to prison health centres and the treatment of accused prisoners by visiting health service providers:
- a new procedure, the taking of hair samples, is prescribed for the purposes of detecting whether a prisoner has used drugs, consumed alcohol, or both (hair samples may be taken only if the prisoner provided a urine sample (required under the Act))

that is suspected to be dilute, tainted, or contaminated, or the prisoner failed or refused to provide, or tampered with, a urine sample required to be provided under the Act):

- the security classification referred to in regulation 26(1)(a)(ii) of the principal regulations is amended to reflect the second or third lowest level of risk category (this will affect the eligibility for temporary release of the class of prisoners described in regulation 26(1)(a)):
- handcuffs used in conjunction with waist restraints are permitted to be applied on a prisoner for the purpose of escorting the prisoner within a prison but only if an officer has reasonable grounds to believe it is necessary in the circumstances:
- the time allowed for daily visits to a female prisoner by her baby and the baby's caregiver is extended until the baby is 24 months old:
- prisoners (including accused prisoners) under the age of 18 years are not permitted to be transported in a vehicle compartment in which there is a prisoner who is 18 years or older.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 25 August 2011.

These regulations are administered by the Department of Corrections.
