



Corrections Amendment Regulations 2023

Cindy Kiro, Governor-General

Order in Council

At Wellington this 6th day of June 2023

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 200 and 202 of the Corrections Act 2004 on the advice and with the consent of the Executive Council.

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal regulations	2
4 Regulation 3 amended (Interpretation)	2
5 New regulation 3A inserted (Transitional, savings, and related provisions)	2
3A Transitional, savings, and related provisions	2
6 Regulation 65 amended (Accommodation of male and female prisoners)	3
7 Regulation 65C amended (Review of determination as to sex)	3
8 Regulation 65E amended (Expiry of determination)	4
9 New regulation 118A inserted (De-escalation techniques to be employed before use of physical force)	4
118A De-escalation techniques to be employed before use of physical force	4
10 New regulation 119B inserted (Warning before use of non-lethal weapon)	4
119B Warning before use of non-lethal weapon	4

11	Regulation 121 amended (Restrictions on carrying batons)	4
12	Regulation 123 amended (Use of batons)	4
13	Regulation 123B amended (Issue of pepper spray)	4
14	Regulation 123C amended (Drawing and use of pepper spray)	5
15	New regulations 123E and 123F inserted	5
	123E Observation and monitoring of prisoner during and after use of pepper spray	5
	123F Decontamination of prisoner and clothing after pepper spray used against prisoner	6
16	Regulation 180 amended (Chief executive may approve mixing of young and adult prisoners)	6
17	New Schedule 1AA inserted	6
18	Schedule 2 amended	6
19	Schedule 5 amended	6
20	Schedule 6 amended	7
	Schedule	8
	New Schedule 1AA inserted	

Regulations

1 Title

These regulations are the Corrections Amendment Regulations 2023.

2 Commencement

These regulations come into force on 6 July 2023.

3 Principal regulations

These regulations amend the Corrections Regulations 2005.

4 Regulation 3 amended (Interpretation)

In regulation 3, insert in its appropriate alphabetical order:

at height means any place from which, if no precautions were taken, a person could fall a distance likely to cause injury

5 New regulation 3A inserted (Transitional, savings, and related provisions)

After regulation 3, insert:

3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

6 Regulation 65 amended (Accommodation of male and female prisoners)

- (1) After regulation 65(2), insert:
 - (2A) In making a determination under subclause (2), the chief executive may consider the matters in regulation 65C(3) and any other matters that the chief executive considers relevant.
- (2) Revoke regulation 65(3).

7 Regulation 65C amended (Review of determination as to sex)

Replace regulation 65C(3) with:

- (3) In reviewing a determination, the chief executive must consider the following matters:
 - (a) the prisoner's nominated sex; and
 - (b) the safety and well-being of the prisoner; and
 - (c) any evidence provided by the prisoner about whether, and if so, for how long, the prisoner has lived as a person of the nominated sex; and
 - (d) any evidence provided by the prisoner about whether the prisoner intends to live permanently as a person of the nominated sex; and
 - (e) the prisoner's birth certificate, if a copy of the birth certificate is supplied by the prisoner; and
 - (f) any evidence provided by the prisoner about whether the prisoner has undergone, or is undergoing, medical treatment to acquire a physical conformation that accords with the gender identity of a person of the nominated sex; and
 - (g) any other matters raised by the prisoner; and
 - (h) any advice from a medical practitioner who has seen the prisoner; and
 - (i) the advice of—
 - (i) a senior employee of the department who has responsibility for custodial services; and
 - (ii) a senior employee of the department who has responsibility for health services for prisoners; and
 - (iii) any other person that the chief executive considers has relevant expertise; and
 - (j) the safety and well-being of other prisoners (of either sex) with whom the prisoner may be accommodated; and
 - (k) the security of the prison; and
 - (l) whether any determination could make it more likely that the prisoner will be segregated from other prisoners in accordance with section 57 to 60 of the Act; and

- (m) the likely effect of any determination on the prisoner's rehabilitation, including the prisoner's access to special treatment programmes.

8 Regulation 65E amended (Expiry of determination)

Revoke regulation 65E(2)(a).

9 New regulation 118A inserted (De-escalation techniques to be employed before use of physical force)

After regulation 118, insert:

118A De-escalation techniques to be employed before use of physical force

A staff member or security officer may only use physical force against a prisoner after techniques to de-escalate behaviour have been employed with the prisoner, unless the use of de-escalation techniques is not reasonably practicable in the circumstances.

10 New regulation 119B inserted (Warning before use of non-lethal weapon)

After regulation 119A, insert:

119B Warning before use of non-lethal weapon

Before using a non-lethal weapon against a prisoner, an officer or a staff member must, unless it is not reasonably practicable in the circumstances to do so, warn the prisoner of the proposed use and give the prisoner the opportunity to become compliant.

11 Regulation 121 amended (Restrictions on carrying batons)

After regulation 121(4), insert:

- (5) For the purpose of subclause (3)(b), **adequate training in the use of the baton** includes training in—
- (a) de-escalation techniques; and
 - (b) using a baton in a way that minimises causing pain or injury to a prisoner; and
 - (c) any conditions or restrictions imposed on baton use under regulation 123(3).

12 Regulation 123 amended (Use of batons)

After regulation 123(2), insert:

- (3) The use of a baton must also comply with any further conditions or restrictions imposed by the chief executive.

13 Regulation 123B amended (Issue of pepper spray)

- (1) After regulation 123B(3A), insert:

- (3B) Before directing the issue of pepper spray contained in a deployment mechanism of a type described in regulation 123A(2)(b) or (c), the manager must be satisfied that reasonable steps have been taken to—
- (a) consult a registered health professional on whether there are any matters (such as underlying injuries, mental health issues, respiratory conditions, or pregnancy) that could place any prisoners against whom the use of pepper spray is being considered at particular risk of harm from the effects of pepper spray; and
 - (b) ensure that any risk of harm identified under paragraph (a) is minimised to the extent that is reasonably practicable; and
 - (c) ensure to the extent that is reasonably practicable that, if pepper spray is to be used, it does not contaminate prisoners other than the prisoners against whom it is used.
- (2) After regulation 123B(4), insert:
- (5) For the purpose of subclause (1), **adequate training in the use of pepper spray** includes training in—
- (a) de-escalation techniques; and
 - (b) minimising the risk of contaminating persons other than those against whom pepper spray is being used; and
 - (c) decontamination procedures; and
 - (d) any conditions or restrictions imposed on the drawing and use of pepper spray under regulation 123C(5).

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

After regulation 123C(1), insert:

- (2) However, to minimise the risk of injury from falling, an officer must not use pepper spray against a prisoner if the prisoner is at height.

15 New regulations 123E and 123F inserted

After regulation 123D, insert:

123E Observation and monitoring of prisoner during and after use of pepper spray

- (1) An officer must continuously observe a prisoner at all times during which pepper spray is used against the prisoner by the officer or another officer.
- (2) An officer must monitor a prisoner every 15 minutes following the use of pepper spray against the prisoner until a registered health professional examines the prisoner under section 83(3) of the Act.
- (3) A prison manager must ensure that a registered health professional is present during every use of pepper spray contained in a deployment mechanism of a type described in regulation 123A(2)(b) or (c).

123F Decontamination of prisoner and clothing after pepper spray used against prisoner

- (1) A prisoner against whom pepper spray has been used must, as soon as is reasonably practicable, be given the opportunity to be decontaminated.
- (2) A prison manager must ensure that equipment to decontaminate prisoners and their clothing is available and easily accessible throughout the prison and in any vehicle used to transport prisoners against whom pepper spray may be used.

16 Regulation 180 amended (Chief executive may approve mixing of young and adult prisoners)

Replace regulation 180(1) with:

- (1) If the chief executive is satisfied that it is in the best interests of a young prisoner or class of young prisoners, the chief executive may, in respect of a prison, approve the mixing of the young prisoner or class of young prisoners with a prisoner or class of prisoners who are 18 years or older.

17 New Schedule 1AA inserted

Insert the Schedule 1AA set out in the Schedule of these regulations as the first schedule to appear after the last regulation of the principal regulations.

18 Schedule 2 amended

In Schedule 2, Part E,—

- (a) replace “A window that allows a complete view of the cell from a vantage point outside the cell door.” with “A window that allows a staff member to view the cell from a vantage point outside the cell door, excluding an area of the cell that is concealed by privacy screening.”; and
- (b) delete “Artificial lighting that is controlled only from outside the cell.”; and
- (c) replace “No privacy screening or any other barrier that prevents a full view of the cell from the door window.” with “Privacy screening consistent with safe custodial management.”

19 Schedule 5 amended

- (1) In Schedule 5, replace clause 13(a) with:

- (a) may be used only in emergency situations; and
- (aa) may be used only if—
 - (i) handcuffs for general use are not available; or
 - (ii) the prison manager has directed the issue of the handcuffs for emergency use under clause 13A; and

(2) In Schedule 5, after clause 13, insert:

13A A prison manager may direct the issue of rigid bar handcuffs (also known as speed cuffs) to respond to an emergency situation at height if the manager has reasonable grounds to believe that the use of rigid bar handcuffs will reduce the risks to officers or prisoners from being at height.

13B Rigid bar handcuffs may only be used under clause 13A by an officer who is trained in their use to respond to emergency situations at height.

20 Schedule 6 amended

In Schedule 6, Part A,—

- (a) replace “A window that allows a complete view of the inside of the cell from a vantage point outside the door” with “A window that allows a staff member to view the cell from a vantage point outside the cell door, excluding an area of the cell that is concealed by privacy screening”; and
- (b) replace “Artificial lighting that is controlled only from the outside of the cell” with “Artificial lighting”; and
- (c) replace “No privacy screening or any other barrier that prevents a full view of the cell from the door window” with “Privacy screening consistent with safe custodial management”.

Schedule
New Schedule 1AA inserted

r 17

Schedule 1AA
Transitional, savings, and related provisions

r 3A

Part 1
Provisions relating to Corrections Amendment Regulations 2023

1 Interpretation for this Part

For the purposes of this Part,—

2023 regulations means the Corrections Amendment Regulations 2023

commencement date means 6 July 2023.

2 Continuation of Part E of Schedule 2 in relation to cell existing immediately before commencement date

(1) Despite regulation 18 of the 2023 regulations, Part E of Schedule 2 as it read immediately before the commencement date continues to apply to a cell that existed immediately before the commencement date.

(2) This clause expires on the fifth anniversary of the commencement date.

3 Continuation of Part A of Schedule 6 in relation to cell existing immediately before commencement date

(1) Despite regulation 20 of the 2023 regulations, Part A of Schedule 6 as it read immediately before the commencement date continues to apply to a cell that existed immediately before the commencement date.

(2) This clause expires on the fifth anniversary of the commencement date.

Rachel Hayward,
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 6 July 2023, amend the Corrections Regulations 2005 (the **principal regulations**).

Regulation 5 inserts *new regulation 3A* to enable transitional, savings, and related provisions to be set out in *new Schedule 1AA* of the principal regulations.

Regulations 6, 7, and 8 amend regulations 65, 65C, and 65E of the principal regulations relating to the accommodation of prisoners in prison. As a result of the amendments, a birth certificate that specifies that a person is male or female is no longer conclusive of the prison in which the person is to be accommodated. If the prisoner supplies a birth certificate, the chief executive may consider it when making a determination under regulation 65(2), and the chief executive must consider it when carrying out a review under regulation 65C.

Regulation 9 inserts *new regulation 118A* into the principal regulations to require staff members and security officers to employ de-escalation techniques before using physical force against prisoners, unless the use of those techniques is not reasonably practicable in the circumstances.

Regulation 10 inserts *new regulation 119B* into the principal regulations to require officers and staff members to warn prisoners before using a non-lethal weapon against them unless it is not reasonably practicable in the circumstances to do so.

Regulations 11, 12, 13, and 14 amend regulations 121, 123, 123B, and 123C of the principal regulations to insert additional conditions and restrictions on the use of batons and pepper spray.

Regulation 15 inserts *new regulations 123E and 123F* into the principal regulations requiring observation and monitoring of prisoners, and the decontamination of prisoners, against whom pepper spray has been used.

Regulation 16 replaces regulation 180(1) of the principal regulations to clarify that mixing of young prisoners and adult prisoners may occur if the chief executive is satisfied that it is in the best interests of the young prisoner or class of young prisoners concerned.

Regulation 18 amends Part E of Schedule 2 of the principal regulations with respect to lighting and privacy features in cells used for the assessment of prisoners' mental health. The item requiring artificial lighting that is controlled only from outside the cell is removed. (The reference to artificial lighting in Part A of Schedule 2 will then apply to those cells.) The items relating to a window and privacy screening are changed so that privacy screening consistent with safe custodial management is a feature of those cells.

Regulation 19 amends Schedule 5 of the principal regulations to enable a prison manager to direct the issue of rigid bar handcuffs (also known as speed cuffs) to respond to an emergency situation at height. The rigid bar handcuffs may only be used by officers who are trained in their use to respond to those situations. *Regulation 4* inserts a new definition of at height into regulation 3 of the principal regulations.

Regulation 20 amends Schedule 6 of the principal regulations with respect to lighting and privacy features in cells used for the penalty of cell confinement. The condition on artificial lighting being controlled only from outside the cell is removed. The items

relating to a window and privacy screening are changed so that privacy screening consistent with safe custodial management is a feature of those cells.

Part 1 of new Schedule 1AA to be inserted into the principal regulations provides savings provisions so that cells existing immediately before 6 July 2023 that are used to assess prisoners' mental health or are used for the penalty of cell confinement will not be required to have the new lighting and privacy features until 6 July 2028.

Regulatory impact statements

The Department of Corrections produced regulatory impact statements on 30 November 2022 and 23 May 2023 to help inform the decisions taken by the Government relating to the contents of this instrument.

Copies of these regulatory impact statements can be found at—

- https://www.corrections.govt.nz/resources/policy_and_legislation/ris_improving_rehabilitation_and_safety_outcomes_in_prisons
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 8 June 2023.

These regulations are administered by the Department of Corrections.