

Version
as at 6 July 2023



Evidence (Digital Video Records) Amendment Regulations 2022

(SL 2022/135)

Evidence (Digital Video Records) Amendment Regulations 2022: revoked, on 6 July 2023, pursuant to regulation 60 of the Evidence (Video Records and Very Young Children's Evidence) Regulations 2023 (SL 2023/111).

Cindy Kiro, Governor-General

Order in Council

At Wellington this 9th day of May 2022

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under section 201 of the Evidence Act 2006 on the advice and with the consent of the Executive Council.

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

These regulations are administered by the Ministry of Justice.

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Regulations

1 Title

These regulations are the Evidence (Digital Video Records) Amendment Regulations 2022.

2 Commencement

These regulations come into force on 9 June 2022.

3 Principal regulations

These regulations amend the Evidence Regulations 2007.

4 New subpart 5 of Part 1 inserted

After regulation 48, insert:

	Subpart 5—Digital video records	
48A	Application of subpart	
	This subpart applies to digital video records.	
48B	Digital video records	
(1)	Subparts 1 to 4 apply to digital video records with any necessary modifications—	
	(a)	despite any wording that excludes or appears to exclude digital video records:
	(b)	unless, and to the extent, expressly modified by regulation 48C.
(2)	Examples of the application of subclause (1) are as follows:	
	(a)	a reference to recording equipment must be read as including a device capable of recording a digital video record:
	(b)	a reference to a master copy, working copy, lawyer’s copy, or party’s copy must be read as including the digital video record in a storage system or facility:
	(c)	a reference to supplying, giving, giving possession of, showing, disclosing, or producing a video record or a copy of a video record, for example

to a defendant's lawyer or a Crown lawyer, must be read as including giving electronic access to view the digital video record in a storage system or facility:

- (d) a reference to returning a video record must be read as including revoking electronic access to the digital video record.
- (3) Despite anything in this subpart, if a Judge directs, the Police may transfer a copy of a digital video record onto a portable data storage device and subparts 1 to 4 apply to that copy without modification.
- (4) For the purposes of this subpart,—
- digital video record** means a video record described in regulation 4 that is recorded in digital form and stored in a storage system or facility, but excludes—
- (a) a video record that is recorded by digital means and is stored on a portable data storage device, for example, a DVD:
 - (b) a mobile video record dealt with under Part 4
- storage system or facility** means a storage system or facility approved by the Commissioner of Police.

48C Express modifications for digital video records

Secure storage of digital video records and means of accessing digital video records (Police)

- (1) Regulations 14 to 18 do not apply to digital video records.
- (2) The Police must, as soon as practicable after a digital video record is made, digitally transfer it directly to a storage system or facility.
- (3) Once the digital video record is transferred, the Police must delete it (and any copy of it) from the device that made it.
- (4) The Police must ensure that the digital video record in the storage system or facility cannot be accessed or used by an unauthorised person.
- (5) The Police must ensure that the means of accessing a particular digital video record, for example, a password, is stored in a secure manner so that it cannot be accessed or used by an unauthorised person.

Secure storage of means of accessing digital video records (others)

- (6) The requirement to retain custody of a video record in regulations 38, 39, 43, 44, 45, and 46 must be read as including a requirement to securely store the means of accessing the digital video record, for example, a password.
- (7) The requirement to keep or place a video record in safe custody in regulations 20A, 21, 22, 24B, 24C, 26, and 31 must be read as including a requirement to securely store the means of accessing the digital video record, for example, a password.

Record keeping by Police

- (8) For a digital video record, the Police must keep a record of—
- (a) the date on which it is recorded;
 - (b) the date on which it is transferred to a storage system or facility and the name of the person who made the transfer;
 - (c) each instance of access made to it in the storage system or facility;
 - (d) if it is edited, the date on which this occurred;
 - (e) the date on which access to it is revoked for any person;
 - (f) the date on which a copy of it is transferred to a portable data storage device and the name of the person who made the transfer;
 - (g) the date on which it is permanently erased.

Destruction of digital video records

- (9) A requirement in these regulations to destroy or erase a video record, for digital video records, must be read as requiring the following to be destroyed or erased:
- (a) all copies, including any copy that remains on a recording device or is transferred to a portable data storage device;
 - (b) any record of the means of accessing the digital video record.

48D Additional requirements for digital video records*Backup copies*

- (1) Any backup copy of a digital video record created automatically by a computer system or a storage system or facility must be treated as if it were the digital video record from which the backup was made.

Edited versions of digital video records

- (2) If a digital video record is edited,—
- (a) the new version—
 - (i) must be clearly identified as an edited version; and
 - (ii) must be dealt with in accordance with these regulations as if it were the original digital video record; and
 - (b) the original must be retained in accordance with regulation 60.

5 Regulation 47 amended (Destruction before destruction date)

- (1) In regulation 47(1), after “destruction”, insert “or erasing”.
- (2) In regulation 47(2), after “destroyed”, insert “or erased”.

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 on 9 June 2022, amend the Evidence Regulations 2007 (the **principal regulations**).

These regulations relate to the use of digital video records by the Police to record interviews with witnesses under Part 1 of the principal regulations. *Regulation 4* inserts *new subpart 5 of Part 1*. *New regulation 48B* applies subparts 1 to 4 of Part 1 to digital video records with any necessary modifications, even if any wording excludes or appears to exclude them. Examples of the application of subparts 1 to 4 to digital video records are listed in *new regulation 48B(2)*. *New regulation 48C* disapplies or expressly modifies the application of particular regulations to digital video records. *New regulation 48D* provides additional requirements for digital video records only.

The term digital video record is defined in *new regulation 48B(4)* as a video record described in regulation 4 (of the principal regulations) that is recorded in digital form and stored in a storage system or facility that is approved by the Commissioner of Police. However, it does not include the following:

- a video record recorded by digital means and stored on a portable storage device, for example, a DVD;
- a mobile video record that is dealt with under Part 4.

New regulation 48B(3) provides that if a digital video record is transferred onto a portable data storage device, subparts 1 to 4 of Part 1 of the principal regulations apply to that copy without modification.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 12 May 2022.

Notes**1 General**

This is a consolidation of the Evidence (Digital Video Records) Amendment Regulations 2022 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Evidence (Video Records and Very Young Children's Evidence) Regulations 2023 (SL 2023/111): regulation 60