



## **Sentencing Amendment Regulations 2010**

Anand Satyanand, Governor-General

### **Order in Council**

At Wellington this 24th day of May 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section 147 of the Sentencing Act 2002, 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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**Schedule**  
**New form 11AA inserted in Schedule of principal regulations**

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**Regulations**

- 1 Title**  
These regulations are the Sentencing Amendment Regulations 2010.
- 2 Commencement**  
These regulations come into force on 1 July 2010.
- 3 Principal regulations amended**  
These regulations amend the Sentencing Regulations 2002.
- 4 Prescribed forms**  
Regulation 5(2) and (3) are revoked and the following sub-clauses substituted:
- “(2) Forms 1 to 9, 11, 11AA, 11A, 11B, and 12, or forms to the same effect, may be used in respect of the matters under the Act to which those forms relate.
- “(3) Forms 10, 12A and 13 to 27, or forms to the same effect, must be used in respect of the matters under the Act to which those forms relate.”
- 5 New regulation 4B inserted**  
The following regulation is inserted after regulation 4A:
- “4B Information relating to making of protection order under section 123B of Act to be sent to Family Court**
- “(1) This regulation applies if a protection order is made under section 123B(2) of the Act.
- “(2) As soon as possible after complying with section 123F(1) of the Act, the court must send to the Registrar of the Family Court,—
- “(a) if the offender has been served with a copy of the order, proof of service; and

- “(b) if the court has directed the offender to attend a specified programme, a copy of that direction; and
- “(c) if requested by the Registrar of the Family Court, copies of any other specified information relating to the making of the protection order.”

**6 Schedule amended**

- (1) The Schedule of the principal regulations is amended by inserting the form 11AA set out in the Schedule of these regulations after form 11.
  - (2) The heading to form 13 of the Schedule prescribing a warrant for the recovery of a motor vehicle is amended by omitting “13” and substituting “12A”.
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**Schedule**

r 6(1)

**New form 11AA inserted in Schedule of principal regulations****Form 11AA  
Protection order***Section 123B, Sentencing Act 2002*\*In the High Court of New Zealand, [*name of registry*] Registry\*In the District Court at [*place*]

\*Select one.

No: [*numbers of proceeding*]**To** [*full name, address, occupation*], the offenderThe court on [*date*] makes a protection order against you under section 123B of the Sentencing Act 2002.**Person(s) protected by the order**

This order protects the following person(s):

[*Full name of person against whom the offence was committed by the offender*]\*[*Full name of each child who ordinarily or periodically resides with the person against whom the offence was committed by the offender*].

\*Omit if it does not apply.

**Conditions of order****1 Standard conditions prohibiting domestic violence and contact**

It is a condition of this order that—

- (a) the offender must not—
- (i) physically or sexually abuse any protected person; or
  - (ii) threaten to physically or sexually abuse any protected person; or
  - (iii) damage, or threaten to damage, property of any protected person; or
  - (iv) engage, or threaten to engage, in other behaviour, including intimidation or harassment,

Form 11AA—*continued*

- that amounts to psychological abuse of any protected person; or
- (v) encourage any person to engage in behaviour against any protected person if that behaviour, if engaged in by the offender, would be prohibited by the order; and
- (b) unless the protected person and the offender are living in the same dwellinghouse with the express consent<sup>1</sup> of the protected person (which may be withdrawn at any time), the offender must not—
- (i) watch, loiter near, or prevent or hinder access to or from, any protected person's place of residence, business, employment, educational institution, or any other place that any protected person visits often; or
  - (ii) follow any protected person about, or stop or accost any protected person in any place; or
  - (iii) without the protected person's express consent<sup>1</sup>, enter or remain on any land or building occupied by any protected person; or
  - (iv) if any protected person is present on any land or building, enter or remain on that land or building in circumstances that constitute a trespass; or
  - (v) make any other contact with any protected person (whether by telephone, electronic message, correspondence, or otherwise), except contact—
    - (A) that is reasonably necessary in any emergency; or
    - (B) that is permitted under any order or written agreement relating to the role of providing day-to-day care for, or access to, or contact with, or custody of, any minor; or
    - (C) that is permitted under any special condition of this protection order; or

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<sup>1</sup> The court may specify, in a special condition of a protection order, a person who may consent or withdraw consent on a protected person's behalf.

Form 11AA—*continued*

- (D) that is necessary for the purposes of attending a family group conference under the Children, Young Persons, and Their Families Act 1989.

*Omit this paragraph if it does not apply.*

**2 Standard conditions relating to weapons**

It is also a condition of this order that the offender—

- (a) must not possess, or have under his or her control, any weapon; and
- (b) must not hold a firearms licence; and
- (c) must,—
- (i) as soon as practicable after being served with a copy of this order, but in any case no later than 24 hours after that service; and
- (ii) on demand made, at any time, by any constable,—
- surrender to a member of the Police—
- (iii) any weapon in his or her possession, or under his or her control, whether or not the weapon is lawfully in his or her possession or under his or her control; and
- (iv) any firearms licence held by him or her.

**Notes**

- The Domestic Violence Act 1995 defines a **weapon** as any firearm, airgun, pistol, restricted weapon, ammunition, or explosive, as those terms are defined in the Arms Act 1983.
- If the court has modified the terms of the standard condition relating to weapons, or directed that the standard condition relating to weapons is not a condition of the order, set out the terms of the court's decision.

Form 11AA—*continued*

*Omit this paragraph if it does not apply.*

**3 Special conditions**

The court also imposes the following special conditions: [*specify*].

Unless otherwise stated, these conditions last for the duration of this order.

*Omit this paragraph if it does not apply.*

**4 Attendance at programme**

The court directs (*or has directed*) [*full name of offender*] to attend the following programme: [*name of programme and programme provider*].

The offender must attend the programme—

- \*(a) for [*number*] sessions per month.
- \*(b) for 1 session per month and for any other session or sessions per month that the programme provider from time to time specifies.
- \*(c) for the number of sessions per month that the programme provider from time to time specifies.

The offender must attend the programme for the first time—

- \*(a) on [*date, time*] at [*place*].
- \*(b) on a date and at a time and place to be advised by the programme provider as soon as practicable.

\*Select one.

Date:

Registrar:

**Important information for offender****Effect of protection order**

This order is a final protection order that lasts indefinitely. Certain conditions of this order may have a limited duration.

Form 11AA—*continued*

*Omit this paragraph if it does not apply.*

**Effect of standard condition relating to weapons**

The effect of this condition is that any firearms licence held by you is automatically revoked.

If you have not already done so, you must surrender to a member of the Police all weapons in your possession or under your control, and your firearms licence, within 24 hours after being served with this order or on demand made by a constable. If you do not, the Police may use their powers under the Arms Act 1983 to enter your property without warrant and search for and seize the weapons. You may also be prosecuted for failing to comply with this order (*see below*).

This order may permit you to have in your possession, or under your control, a specified weapon, or weapons of a specified class, either unconditionally or subject to certain conditions. You may also be permitted to hold a firearms licence. You are in breach of this order if you possess weapons, or have weapons under your control, other than as permitted by this order.

*Omit this paragraph if it does not apply.*

**Direction to attend programme**

The court has directed you to attend a programme. If you fail to attend programme sessions, you may be prosecuted for failing to comply with this order (*see below*).

**Prohibition on contact with protected person**

The effect of this order is to prohibit you from having contact with any protected person in any of the ways set out in the order. This order may also contain special conditions relating to contact between you and a protected person. You should read the terms of the order very carefully to find out what contact you may or may not have with any protected person. If the protected person has expressly consented to living in the same dwellinghouse with you, the prohibition on contact and any special condition that is inconsistent with living in the same dwellinghouse are suspended.

The protected person may withdraw that consent at any time. If that happens (and this order has not in the meantime been discharged or

Form 11AA—*continued*

varied), you must comply with all the standard conditions and special conditions of the order.

Note that the special conditions of this order may specify who is entitled to consent (or withdraw consent) on behalf of a protected person.

**Modification or discharge of this order**

You or a protected person may apply to a Family Court at any time—

- (a) for the modification or discharge of the standard condition relating to weapons. (The Family Court may make a change to this standard condition only if it is satisfied that the condition, or a term of the condition, is not needed to protect the persons for whose benefit this order applies from further domestic violence):
- (b) for a variation or discharge of any special conditions of this order, or for the imposition of a new special condition:
- (c) for the variation or discharge of a direction to attend a programme, or for that direction to be made:
- (d) for this order to be discharged.

**Consequences of breach of this order**

You commit an offence if you breach the order by—

- (a) doing an act in contravention of this order; or
- (b) failing to comply with any condition in this order.

You have a defence to proceedings for this offence if you can prove that you had a reasonable excuse for breaching the order.

The maximum penalty for this offence is 2 years' imprisonment.

If a constable has good cause to suspect that you have breached this order, you may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, any bail application must be made to a Judge.

**Consequences of failing to comply with direction**

You commit an offence if, without reasonable excuse, you fail on any occasion to comply with a direction to attend a programme.

Form 11AA—*continued*

The maximum penalty for this offence is 6 months' imprisonment or a fine not exceeding \$5,000.

**Advice**

If you need help, consult a lawyer or contact a Family Court office immediately.

**Office hours**

The office of a Family Court is open from 9 am to 5 pm on Mondays to Fridays inclusive.

## Important information for protected persons

**Effect of protection order**

This order is a final protection order that lasts indefinitely. Certain conditions of this order may have a limited duration.

**Offender prohibited from contact with you**

The effect of this order is to prohibit the offender from having contact with you in any of the ways set out in the order. This order may also contain special conditions relating to contact between you and the offender.

If you expressly consent to living in the same dwellinghouse with the offender, the prohibition on contact and any special condition that is inconsistent with living in the same dwellinghouse are suspended.

You may withdraw that consent at any time. If that happens (and this order has not in the meantime been discharged or varied), the offender must comply with all the standard conditions and special conditions of the order.

Note that the special conditions of this order may specify who is entitled to consent (or withdraw consent) on behalf of a protected person.

**Attendance at programme**

You may request to attend a programme, or that any child protected by the order attend a programme, or that both yourself and a child

Form 11AA—*continued*

protected by the order attend a programme. If you wish to make such a request, you may do so by contacting the Registrar of a Family Court.

**Modification or discharge of this order**

You (or the offender) may apply to a Family Court at any time—

- (a) for the modification or discharge of the standard condition relating to weapons. (The Family Court may make a change to this standard condition only if it is satisfied that the condition, or a term of the condition, is not needed to protect the persons for whose benefit this order applies from further domestic violence):
- (b) for a variation or discharge of any special conditions of this order, or for the imposition of a new special condition:
- (c) for the variation or discharge of a direction that the offender attend a programme, or for that direction to be made:
- (d) for this order to be discharged.

If the offender makes any of these applications, you will be notified and have an opportunity to dispute the application.

**Consequences of breach of this order**

The offender commits an offence if he or she—

- (a) does any act in contravention of this order; or
- (b) fails to comply with any condition in this order.

The offender will have a defence to proceedings for this offence if it can be proved that he or she had a reasonable excuse for breaching the order.

The maximum penalty for this offence is 2 years' imprisonment.

If a constable has good cause to suspect that the offender has breached the order, the offender may be arrested without warrant. Police bail is not available during the 24 hours immediately following an arrest. During that period, the offender may apply to a Judge for bail.

Form 11AA—*continued***Consequences of failing to comply with direction**

The offender commits an offence if, without reasonable excuse, he or she fails on any occasion to comply with a direction to attend a programme.

The maximum penalty for this offence is 6 months' imprisonment or a fine not exceeding \$5,000.

**Advice**

If you need help, consult a lawyer or contact a Family Court office immediately.

**Office hours**

The office of a Family Court is open from 9 am to 5 pm on Mondays to Fridays inclusive.

Michael Webster,  
for Clerk of the Executive Council.

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**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 1 July 2010, amend the Sentencing Regulations 2002 (the **principal regulations**).

The amendments—

- insert in the Schedule of the principal regulations a new *form 11AA* that sets out the form of a protection order issued by a court against an offender under section 123B of the Act;
- require a court that has issued an order of this kind to send to the Registrar of the Family Court certain information relating to the order:

- make technical and consequential amendments to the principal regulations.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 27 May 2010.

These regulations are administered by the Ministry of Justice and the Department of Corrections.

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