



Sentencing Amendment Regulations (No 2) 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 26th day of July 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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Regulations

- 1 Title**
These regulations are the Sentencing Amendment Regulations (No 2) 2010.
 - 2 Commencement**
These regulations come into force on 26 August 2010.
 - 3 Principal regulations amended**
These regulations amend the Sentencing Regulations 2002.
 - 4 Prescribed forms**
Regulation 5(2) is amended by omitting “and 12” and substituting “12, and 12B to 12F”.
 - 5 New forms substituted**
The Schedule is amended by revoking forms 7 and 8 and substituting the forms 7 and 8 set out in Schedule 1 of these regulations.
 - 6 New forms inserted**
The Schedule is amended by inserting the forms 12B to 12F set out in Schedule 2 of these regulations after form 12A.
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Schedule 1

r 5

New forms 7 and 8 substituted in Schedule

Form 7

Order for minimum period of imprisonment
within determinate sentence or sentence of
imprisonment for life

*Sections 86, 86D(4), 86E(4)(a), and 103, Sentencing Act
2002*

Complete this form and attach it to form 9 (warrant of commitment).

To every constable and to the Manager of the prison at [*place*]

- 1 [*Full name, address, occupation*] (the offender) was, on [*date*], convicted of [*offence*] by the [*specify*] Court at [*place*] and was this day/on [*date*]* sentenced to imprisonment for a term of [*specify period*]/imprisonment for life*.

*Select one.

- 2 *For this paragraph select the statement that applies.*

Section 86(2) of the Sentencing Act 2002 applies to the offender as I am satisfied that the period of imprisonment otherwise applicable to the offender's determinate sentence under section 84(1) of the Parole Act 2002 is insufficient for all or any of the following purposes:

- holding the offender accountable for the harm done to the victim and the community by the offending:
- denouncing the conduct in which the offender was involved:
- deterring the offender or other persons from committing the same or a similar offence:
- protecting the community from the offender.

or

I am satisfied that section 86D(4)/86E(4)(a)* of the Sentencing Act 2002 applies to the offender.

*Select one.

or

Section 103(1)(a)(i) of the Sentencing Act 2002 applies to the offender, and I consider that the minimum term of imprison-

Form 7—*continued*

ment specified below is necessary to satisfy all or any of the following purposes:

- holding the offender accountable for the harm done to the victim and the community by the offending:
- denouncing the conduct in which the offender was involved:
- deterring the offender or other persons from committing the same or a similar offence:
- protecting the community from the offender.

3 The court orders, under section 86/86D(4)/86E(4)(a)/103* of the Sentencing Act 2002, that the offender must serve a minimum period of imprisonment of [*specify period*].

*Select one.

Dated at [*specify*] Court at [*place*] on [*date*]

Signature:

(Judge)

Form 8
Order for minimum period of imprisonment
within sentence of preventive detention

Section 89, Sentencing Act 2002

Complete this form and attach it to form 9 (warrant of commitment).

To every constable and to the Manager of the prison at *[place]*

1 *[Full name, address, occupation]* (the offender) was, on *[date]*, convicted of *[offence]* by the *[specify]* Court at *[place]* and was this day/on *[date]** sentenced to preventive detention.

*Select one.

2 *For this paragraph select the statement that applies.*

I have considered the matters referred to in section 89(2) of the Sentencing Act 2002, and consider that a minimum period of imprisonment of *[specify period]* is appropriate.

or

I am satisfied that section 86D(7) of the Sentencing Act 2002 applies to the offender, and consider that a minimum period of imprisonment of *[specify period]* is appropriate.

3 The court orders, under section 89 of the Sentencing Act 2002, that the offender serve a minimum period of imprisonment of *[specify period]*.

Dated at *[specify]* Court at *[place]* on *[date]*

Signature:

(Judge)

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Schedule 2
New forms 12B to 12F inserted in
Schedule

Form 12B
Notice of consequences of first warning
Section 86B(4), Sentencing Act 2002

Case No:

Note: In this notice, **serious violent offence** means any of the offences listed in the definition of that expression in section 86A of the Sentencing Act 2002 (a copy of the definition of serious violent offence is attached).

To *[full name, address, and occupation of defendant]*

- 1 On *[date]*, you were convicted of the following serious violent offence(s): *[list offences]*.
- 2 I have given you a first warning, in which I warned you of the consequences if you are convicted of any serious violent offence committed after that first warning.
- 3 This notice records in writing the consequences that I explained to you.

Consequences of first warning

If you are convicted of any serious violent offence (except murder) committed after you received the first warning, you will receive a final warning. In addition, if the Judge imposes a sentence of imprisonment for that offence (other than life imprisonment for manslaughter, or preventive detention) then you will serve that sentence without parole or early release.

If you are convicted of a murder committed after you received the first warning, you will be sentenced to imprisonment for life. You must serve the life sentence without parole unless it would be manifestly unjust to do so. If you receive a life sentence without parole, you will not be released from prison. If serving the sentence without parole would be manifestly unjust, the Judge must specify the minimum term of imprisonment you will serve.

Form 12B—*continued*

Dated at [*specify*] Court at [*place*] on [*date*]

Signature:

(Judge)

Form 12C
Notice of consequences of final warning
Sections 86C(7) and 86E(9), Sentencing Act 2002

Case No:

Note: In this notice, **serious violent offence** means any of the offences listed in the definition of that expression in section 86A of the Sentencing Act 2002 (a copy of the definition of serious violent offence is attached).

To *[full name, address, and occupation of defendant]*

- 1 On *[date]*, you were convicted of the following serious violent offence(s): *[list offences]*.
- 2 You had a record of a first warning at the time you committed the offence(s).
- 3 I have therefore given you a final warning, in which I warned you of the consequences if you are convicted of any serious violent offence committed after that final warning.
- 4 This notice records in writing the consequences that I explained to you.

Consequences of final warning

If you are convicted of any serious violent offence (except murder or manslaughter) committed after you received the final warning, you will either be—

- (a) sentenced to the maximum term of imprisonment for that offence. You will serve that sentence without parole unless that would be manifestly unjust; or
- (b) sentenced to preventive detention. You will serve a minimum term of imprisonment of at least the length of the maximum term of imprisonment for the offence, unless that would be manifestly unjust. In that case, the Judge must specify the minimum term of imprisonment that you will serve.

If you are convicted of a murder committed after you received the final warning, you will be sentenced to imprisonment for life. You must serve the life sentence without parole unless it would be manifestly unjust to do so. If you receive a life sentence without parole, you will not be released from prison.

Form 12C—*continued*

If serving the life sentence without parole would be manifestly unjust, the Judge must impose a minimum term of imprisonment of at least 20 years unless that would also be manifestly unjust. In that case, the Judge must specify the minimum term of imprisonment that you will serve.

If you are convicted of manslaughter committed after you received the final warning, you will be sentenced to imprisonment for life. The Judge must impose a minimum term of imprisonment of at least 20 years unless that would be manifestly unjust. In that case, the Judge must impose a minimum term of imprisonment of at least 10 years.

Dated at [*specify*] Court at [*place*] on [*date*]

Signature:

(Judge)

Form 12D
Notice of cancellation of warning
Section 86F(2), Sentencing Act 2002

Case No:

Note: In this notice, **serious violent offence** means any of the offences listed in the definition of that expression in section 86A of the Sentencing Act 2002 (a copy of the definition of serious violent offence is attached).

To *[full name, address, and occupation of defendant]*

- 1 On *[date]*, you were convicted of the following serious violent offence(s): *[list offences]*.
- 2 *For this paragraph select the statement that applies.*
On that occasion, the court gave you a first/final* warning, which warned you of the consequences if you were convicted of another serious violent offence committed after that warning.
*Select one.
- 3 On *[date]*, your appeal against your conviction(s) for the offences for which you received your first/final* warning was allowed and your conviction was/convictions were* quashed.
- 4 The court has therefore ordered that the record of the first/final* warning be cancelled.
*Select one.
- 5 You no longer have a record of a first/final* warning.
*Select one.

Dated at *[specify]* Court at *[place]* on *[date]*

Signature:

(Judge)

Form 12E
Notice of substituted warning
Section 86F(5), Sentencing Act 2002

Case No:

Note: In this form, **serious violent offence** means any of the offences listed in the definition of that expression in section 86A of the Sentencing Act 2002 (a copy of the definition of serious violent offence is attached).

To *[full name, address, and occupation of defendant]*

- 1 On *[conviction date]*, you were convicted of the following serious violent offence(s): *[list offences]*.
- 2 On that occasion, you were given a final warning because you had a record of a first warning when you committed the offence(s).
- 3 On *[date]*, your appeal against your conviction(s) for the offence(s) for which you received your first warning was allowed and your conviction was/convictions were* quashed.
*Select one.
- 4 The court ordered that a first warning replace your final warning. The first warning is deemed to have taken effect on *[conviction date]*.
- 5 This notice records in writing the consequences if you are convicted of any serious violent offence committed after that first warning.

Consequences of first warning

If you are convicted of any serious violent offence (except murder) committed after you received the first warning, you will receive a final warning. In addition, if the Judge imposes a sentence of imprisonment for that offence (other than life imprisonment for manslaughter, or preventive detention), then you will serve that sentence without parole or early release.

If you are convicted of a murder committed after you receive the first warning, you will be sentenced to imprisonment for life. You must serve the life sentence without parole unless it would be manifestly unjust to do so. If you receive a life sentence without parole, you will

Form 12E—*continued*

not be released from prison. If serving the sentence without parole would be manifestly unjust, the Judge must specify the minimum term of imprisonment you will serve.

Dated at [*specify*] Court at [*place*] on [*date*]

Signature:

(Judge)

Form 12F
Order that offender serve full term of
imprisonment

*Sections 86C(4), 86D(3), 86E(2), and 103(2A), Sentencing
Act 2002*

Complete this form and attach it to form 9 (warrant of commitment)

Case No:

To every constable and to the Manager of the prison at [*place*]

1 [*Full name, address, occupation*] (the offender) was, on [*date*], convicted of [*offence*] by the [*specify*] court at [*place*] and was this day/on [*date*]* sentenced to imprisonment for a term of [*specify period*]/imprisonment for life.

*Select one.

2 *For this paragraph select the statement that applies.*

I am satisfied that section 86C(4) of the Sentencing Act 2002 applies to the offender.

or

I am satisfied that section 86D(3) of the Sentencing Act 2002 applies to the offender.

or

I am satisfied that section 86E(2) of the Sentencing Act 2002 applies to the offender.

or

I consider that section 103(2A) applies to the offender and no minimum term of imprisonment would be sufficient to satisfy any or all of the following purposes:

- holding the offender accountable for the harm done to the victim and the community by the offending:
- denouncing the conduct in which the offender was involved:
- deterring the offender or other persons from committing the same or a similar offence:
- protecting the community from the offender.

Form 12F—*continued*

- 3 The court orders, under section 86C(4)/86D(3)/86E(2)/103(2A)* of the Sentencing Act 2002, that the offender must serve the full term of imprisonment.

*Select one.

Dated at [*specify*] Court at [*place*] on [*date*]

Signature:

(Judge)

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 on 26 August 2010, amend the Sentencing Regulations 2002. The regulations amend the Schedule of the principal regulations by revoking and substituting 2 forms, and prescribing 5 new forms, which are required as a result of the enactment of the Sentencing and Parole Reform Act 2010.

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

Date of notification in *Gazette*: 29 July 2010.

These regulations are administered by the Ministry of Justice.
