

Reprint
as at 15 May 2017



Sentencing (Drug and Alcohol Testing) Amendment Act 2016

Public Act 2016 No 85
Date of assent 15 November 2016
Commencement see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice and Department of Corrections.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Sentencing (Drug and Alcohol Testing) Amendment Act 2016.

2 Commencement

- (1) This Act comes into force on the earlier of the following:
 - (a) a date appointed by the Governor-General by Order in Council;
 - (b) the day immediately after the expiry of the 6-month period.
- (2) The **6-month period** is the period of 6 months that commences on the date on which this Act receives the Royal assent.

3 Principal Act

This Act amends the Sentencing Act 2002 (the **principal Act**).

Interpretation

4 Section 4 amended (Interpretation)

In section 4(1), insert in their appropriate alphabetical order:

bodily sample, for a person, means—

- (a) a sample of the person's blood, breath, hair, or urine; or
- (b) any other sample of a similar kind from the person

controlled drug has the same meaning as in section 2(1) of the Misuse of Drugs Act 1975

drug or alcohol condition means a condition of a sentence of supervision, intensive supervision, or home detention, or a post-detention or post-imprisonment condition,—

- (a) that is imposed under section 52(2)(bb), 54I(3)(ba), 80D(4)(ca), 80N(1) and (2)(b), or 93(1) or (2)(b); and
- (b) that prohibits an offender from doing 1 or more of the following:
 - (i) using (as defined in this section) a controlled drug;
 - (ii) using a psychoactive substance;
 - (iii) consuming alcohol

drug or alcohol monitoring device means a device, connected to a person's body, that is able to detect the presence in the person's body of 1 or more of the following:

- (a) a controlled drug used by the person;
- (b) a psychoactive substance used by the person;
- (c) alcohol consumed by the person

medical laboratory technologist means a health practitioner who is, or is deemed to be, registered with the Medical Sciences Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medical laboratory science

medical officer means—

- (a) a person acting in a hospital who, in the normal course of the person's duties, takes blood specimens; or
- (b) a nurse; or
- (c) a medical laboratory technologist

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

nurse means a health practitioner who is, or is deemed to be, registered with the Nursing Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of nursing whose scope of practice permits the performance of general nursing functions

post-imprisonment condition means a special condition that is imposed under section 93(1) or (2)(b) on an offender sentenced to a short term of imprisonment

psychoactive substance has the same meaning as in section 9 of the Psychoactive Substances Act 2013

testing of a person for a controlled drug, a psychoactive substance, or alcohol includes, without limitation, the person's permitting the collection for analysis of a bodily sample

using, in relation to a controlled drug and a person, excludes the person using the controlled drug as a prescription medication in accordance with section 8(2)(c) or (d) of the Misuse of Drugs Act 1975

5 New section 4A inserted (Transitional, savings, and related provisions)

[Repealed]

Section 5: repealed, on 15 May 2017, by section 18(2).

Supervision

6 Section 52 amended (Other special conditions)

(1) After section 52(2)(ba), insert:

(bb) conditions prohibiting the offender from doing 1 or more of the following:

- (i) using (as defined in section 4(1)) a controlled drug:
- (ii) using a psychoactive substance:
- (iii) consuming alcohol:

(2) After section 52(3A), insert:

(3B) However, subsection (3A) does not prevent the court from imposing a drug or alcohol condition, which would mean that the offender may be required, under section 80ZO(2)(b), to submit to continuous monitoring.

Intensive supervision

7 Section 54I amended (Other special conditions)

(1) After section 54I(3)(b), insert:

(ba) conditions prohibiting the offender from doing 1 or more of the following:

- (i) using (as defined in section 4(1)) a controlled drug:
- (ii) using a psychoactive substance:
- (iii) consuming alcohol:

(2) *[Repealed]*

Section 7(2): repealed, on 15 May 2017, by section 18(2).

*Offence: supervision***8 New section 70AA inserted (Offences related to sentences of supervision with drug or alcohol conditions)**

After section 70, insert:

70AA Offences related to sentences of supervision with drug or alcohol conditions

An offender who is subject to a sentence of supervision with a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000, if the offender—

- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under sections 80ZO(2)(a) and 80ZQ; or
 - (ii) to submit to continuous monitoring when required to do so under section 80ZO(2)(b); or
 - (iii) to comply with instructions specified in a notice given under section 80ZO(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or
 - (iv) to accompany an authorised person, when required to do so under section 80ZQ(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
 - (v) to contact a specified automated system when required to do so under section 80ZO(2)(c); or
 - (vi) to report, at any time or times when required to do so under section 80ZQ(5), to a specified testing facility to undergo testing; or
 - (vii) to undergo a testing procedure when required to do so under sections 80ZO(2)(c) and 80ZQ; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under section 80ZO(2)(a) or (c) for the purposes of a prescribed testing procedure; or
- (c) tampers with a drug or alcohol monitoring device required under section 80ZO(2)(b) or does anything with the intention of interfering with the functioning of that device.

*Offence: intensive supervision***9 New section 70B inserted (Offences related to sentences of intensive supervision with drug or alcohol conditions)**

After section 70A, insert:

70B Offences related to sentences of intensive supervision with drug or alcohol conditions

An offender who is subject to a sentence of intensive supervision with a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,500, if the offender—

- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under sections 80ZO(2)(a) and 80ZQ; or
 - (ii) to submit to continuous monitoring when required to do so under section 80ZO(2)(b); or
 - (iii) to comply with instructions specified in a notice given under section 80ZO(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or
 - (iv) to accompany an authorised person, when required to do so under section 80ZQ(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
 - (v) to contact a specified automated system when required to do so under section 80ZO(2)(c); or
 - (vi) to report, at any time or times when required to do so under section 80ZQ(5), to a specified testing facility to undergo testing; or
 - (vii) to undergo a testing procedure when required to do so under sections 80ZO(2)(c) and 80ZQ; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under section 80ZO(2)(a) or (c) for the purposes of a prescribed testing procedure; or
- (c) tampers with a drug or alcohol monitoring device required under section 80ZO(2)(b) or does anything with the intention of interfering with the functioning of that device.

Home detention

10 Section 80D amended (Special conditions of sentence of home detention)

After section 80D(4)(c), insert:

- (ca) conditions prohibiting the offender from doing 1 or more of the following:
 - (i) using (as defined in section 4(1)) a controlled drug;
 - (ii) using a psychoactive substance;
 - (iii) consuming alcohol;

11 Section 80P amended (Special post-detention conditions)

(1) After section 80P(2)(b), insert:

- (ba) conditions prohibiting the offender from doing 1 or more of the following:
- (i) using (as defined in section 4(1)) a controlled drug:
 - (ii) using a psychoactive substance:
 - (iii) consuming alcohol:

(2) After section 80P(4), insert:

(4A) However, subsection (4) does not prevent the court from imposing a drug or alcohol condition, which would mean that the offender may be required, under section 80ZO(2)(b), to submit to continuous monitoring.

*Offences: home detention***12 New section 80SA inserted (Offences related to sentences of home detention with drug or alcohol conditions)**

After section 80S, insert:

80SA Offences related to sentences of home detention with drug or alcohol conditions

An offender who is subject to a sentence of home detention with a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000, if the offender—

- (a) refuses or fails, without reasonable excuse,—
- (i) to undergo a testing procedure when required to do so under sections 80ZO(2)(a) and 80ZQ; or
 - (ii) to submit to continuous monitoring when required to do so under section 80ZO(2)(b); or
 - (iii) to comply with instructions specified in a notice given under section 80ZO(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or
 - (iv) to accompany an authorised person, when required to do so under section 80ZQ(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
 - (v) to contact a specified automated system when required to do so under section 80ZO(2)(c); or
 - (vi) to report, at any time or times when required to do so under section 80ZQ(5), to a specified testing facility to undergo testing; or

- (vii) to undergo a testing procedure when required to do so under sections 80ZO(2)(c) and 80ZQ; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under section 80ZO(2)(a) or (c) for the purposes of a prescribed testing procedure; or
- (c) tampers with a drug or alcohol monitoring device required under section 80ZO(2)(b) or does anything with the intention of interfering with the functioning of that device.

13 New section 80UA inserted (Offences related to post-detention conditions that are drug or alcohol conditions)

After section 80U, insert:

80UA Offences related to post-detention conditions that are drug or alcohol conditions

An offender who is subject to a post-detention condition that is a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$1,500, if the offender—

- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under sections 80ZO(2)(a) and 80ZQ; or
 - (ii) to submit to continuous monitoring when required to do so under section 80ZO(2)(b); or
 - (iii) to comply with instructions specified in a notice given under section 80ZO(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or
 - (iv) to accompany an authorised person, when required to do so under section 80ZQ(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
 - (v) to contact a specified automated system when required to do so under section 80ZO(2)(c); or
 - (vi) to report, at any time or times when required to do so under section 80ZQ(5), to a specified testing facility to undergo testing; or
 - (vii) to undergo a testing procedure when required to do so under sections 80ZO(2)(c) and 80ZQ; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under section 80ZO(2)(a) or (c) for the purposes of a prescribed testing procedure; or

- (c) tampers with a drug or alcohol monitoring device required under section 80ZO(2)(b) or does anything with the intention of interfering with the functioning of that device.

Conditions, offences, and rules related to community-based offenders

14 New subpart 2C of Part 2 inserted

After section 80ZM, insert:

Subpart 2C—Drug or alcohol conditions

80ZN Imposition, and effect, of drug or alcohol condition

- (1) This section applies if a court imposes a drug or alcohol condition on an offender under section 52(2)(bb), 54I(3)(ba), 80D(4)(ca), 80N(1) and (2)(b), or 93(1) or (2)(b).
- (2) The court cannot direct, indicate, or require that the offender undergo or submit to drug or alcohol testing or continuous monitoring, but the condition requires the offender to comply with all requirements arising from an authorised person giving the offender notice under section 80ZO(2).
- (3) The court must advise the offender that the offender must do any 1 or more of the following things if required to do so by notice given by an authorised person under section 80ZO(2):
 - (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol:
 - (b) submit to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device connected to the offender's body:
 - (c) contact an automated system, and undergo testing for a controlled drug, a psychoactive substance, or alcohol if required by a response notice given by the automated system.

80ZO Offender with drug or alcohol condition may be required to undergo testing or submit to continuous monitoring

- (1) This section applies to an offender who is—
 - (a) subject to a sentence of supervision, intensive supervision, or home detention with a drug or alcohol condition; or
 - (b) subject to a post-detention condition or a post-imprisonment condition that is a drug or alcohol condition.
- (2) An authorised person may, by notice given to an offender to whom this section applies, require the offender to do any 1 or more of the following:

- (a) undergo testing for a controlled drug, a psychoactive substance, or alcohol using a testing procedure prescribed in rules made under section 80ZT(1)(a):
 - (b) submit, during a reasonable period specified in the notice, to continuous monitoring of the offender's compliance with the drug or alcohol condition through a drug or alcohol monitoring device of a type prescribed in rules made under section 80ZT(1)(d):
 - (c) contact, in 1 or more specified reasonably practicable ways, during 1 or more specified periods on specified days, a specified automated system and, if required by a response notice given by the automated system, undergo testing for a controlled drug, a psychoactive substance, or alcohol, using a specified testing procedure prescribed in rules made under section 80ZT(1)(a).
- (3) An authorised person exercising that person's discretion under subsection (2)—
- (a) must comply with any rules made under section 80ZT; and
 - (b) may—
 - (i) select an offender to do what is specified in subsection (2)(a), (b), or (c) in any manner (including randomly); and
 - (ii) make a determination in respect of the offender with or without evidence that the offender has breached the condition; and
 - (c) must, if requiring the offender to do what is specified in subsection (2)(a) or (c), determine the prescribed testing procedure to be used for the testing required under subsection (2)(a), or required if the offender is selected to undergo testing by an automated system that the offender is required to contact under subsection (2)(c).
- (4) A notice given to an offender under subsection (2)(b) may include a requirement that the offender comply with instructions specified in the notice that are reasonably necessary for the effective administration of the continuous monitoring (for example, an instruction to charge the monitoring device regularly or protect it from events, such as submersion in water, that may damage it or interfere with its functioning).
- (5) An automated system specified in a notice given under subsection (2)(c) must include an automated selection method that determines, in any manner consistent with rules made under section 80ZT(1)(b) (including randomly), whether the offender is required to undergo testing.
- (6) Only a medical practitioner or medical officer may collect a blood sample from an offender under this section.
- (7) In this section and in sections 70AA, 70B, 80SA, 80UA, 80ZP to 80ZR, and 96A, **authorised person** means a person who is—
- (a) a constable; or

- (b) an employee of the Department of Corrections authorised by the chief executive of that department to require offenders to undergo testing or monitoring.

80ZP How notice of requirement to undergo testing or to submit to continuous monitoring may be given

- (1) An authorised person may give an offender a notice under section 80ZO(2) in any of the following ways:
 - (a) by giving the notice personally and in writing to the offender:
 - (b) by giving the notice personally and orally to the offender, then, unless the notice requires the offender only to undergo breath screening, as soon as practicable recording it in writing and giving a copy to the offender:
 - (c) if the notice is given under section 80ZO(2)(a), by giving the notice to the offender by telephone or other means of electronic communication (as defined in section 5 of the Electronic Transactions Act 2002), then as soon as practicable recording it in writing (if it is not already in writing) and giving a copy to the offender.
- (2) An automated system must, in response to an offender contacting it as required by a notice given under section 80ZO(2)(c) and subsection (1), give the offender a spoken or written response notice specifying whether the offender is required to undergo testing.
- (3) A notice given by an authorised person under subsection (1)(c) or a response notice that is given under subsection (2) and that requires an offender to undergo testing must specify the name and location of a testing facility to which the offender is required to report to undergo testing, and the time or times when the offender is required to report, under section 80ZQ.

80ZQ Where prescribed testing procedure may be carried out

- (1) An authorised person may require an offender to whom section 80ZO applies to undergo testing at the place where the offender is given notice under section 80ZO(2) personally by the authorised person.
- (2) Subsection (1) applies even if the place where the offender is given notice personally by the authorised person is—
 - (a) a public place (as defined in section 2(1) of the Summary Offences Act 1981); or
 - (b) a place that is wholly or partly outside a dwelling house, or any other building, at the offender's residential address.
- (3) However, an offender cannot be required to undergo a prescribed testing procedure in a place specified in subsection (2)(a) or (b) if the testing procedure involves the collection of blood or urine.

- (4) An offender given notice personally (in writing or orally) by the authorised person may be required by the authorised person, if subsection (3) applies or if it is not reasonably practicable to require the offender to undergo testing at the place where the offender is given notice, to accompany the authorised person to any other place where it is likely that it will be reasonably practicable for the offender to undergo testing.
- (5) An offender given a notice under section 80ZP(1)(c) or (2) that requires the offender to undergo testing is required to report to the testing facility whose name and location are specified in the notice, at the time or times specified, to undergo testing.

80ZR Information obtained from drug and alcohol testing or monitoring

- (1) Information obtained from a prescribed testing procedure or a drug or alcohol monitoring device required under section 80ZO(2)—
 - (a) may be used for all or any of the following purposes:
 - (i) verifying compliance by the offender with a drug or alcohol condition;
 - (ii) detecting non-compliance by an offender with a drug or alcohol condition, and providing evidence of that non-compliance;
 - (iii) verifying that the offender has not tampered or otherwise interfered with a drug or alcohol monitoring device;
 - (iv) any purpose for which the offender has requested to use the information or consented to its use; and
 - (b) must not, except at the request or with the consent of the offender, be used—
 - (i) as evidence that the offender committed an offence, other than an offence against any of sections 70 to 70B, 80S, 80SA, 80U, 80UA, 96, and 96A; or
 - (ii) for any other purpose not listed in paragraph (a).
- (2) A court may, in the absence of evidence that is available to the court and that is to the contrary effect, presume that any information that an authorised person has certified in writing was obtained from a prescribed testing procedure or a drug or alcohol monitoring device—
 - (a) is accurate; and
 - (b) was obtained in the manner required by sections 80ZO to 80ZQ.

80ZS Offence to refuse authorised person entry to offender's residential address

- (1) This section applies to an offender who is—
 - (a) subject to a sentence of supervision, intensive supervision, or home detention with a drug or alcohol condition, or subject to a post-detention

- condition or post-imprisonment condition that is a drug or alcohol condition; and
- (b) required, under section 80ZO(2)(b), to submit to continuous monitoring of the offender's compliance with the condition.
- (2) The offender commits an offence if the offender refuses or fails, without reasonable excuse, to allow an authorised person to enter the offender's residential address for all or any of the following purposes:
- (a) attaching a drug or alcohol monitoring device to, or removing the device from, the offender;
- (b) servicing or inspecting the device;
- (c) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device.
- (3) An offender who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000.
- (4) In subsection (2), **authorised person** means any of the following:
- (a) an authorised person (as defined in section 80ZO(7)) who has produced evidence of that person's identity to the offender;
- (b) a person accompanying a person described in paragraph (a);
- (c) a person who—
- (i) has produced evidence of that person's identity to the offender; and
- (ii) is authorised in writing by an authorised person (as defined in section 80ZO(7)) to enter the offender's residential address for all or any of the following purposes:
- (A) attaching a drug or alcohol monitoring device to, or removing the device from, the offender;
- (B) servicing or inspecting the device;
- (C) installing, removing, servicing, or inspecting any equipment necessary for the operation of the device; and
- (iii) has produced that written authority to the offender.

80ZT Rules about drug and alcohol testing and monitoring

- (1) The chief executive may, by notice in the *Gazette*, make rules for all or any of the following purposes:
- (a) prescribing, for the purposes of section 80ZO(2)(a) and (c), 1 or more types of testing procedure that an offender to whom section 80ZO applies may be required to undergo:

- (b) specifying how often each of the prescribed testing procedures may be carried out:
 - (c) prohibiting authorised persons from requiring an offender to undergo certain testing procedures if other less intrusive testing procedures are available and are sufficient in the circumstances:
 - (d) prescribing, for the purposes of section 80ZO(2)(b), 1 or more types of drug or alcohol monitoring device that may be connected to an offender to whom section 80ZO applies:
 - (e) specifying restrictions as to how often, and for how long—
 - (i) continuous monitoring may be carried out:
 - (ii) an offender may be required to contact an automated system:
 - (f) prescribing, for any 1 or more of the following, minimum levels that must be present in a bodily sample collected from an offender in order for the sample to be used as evidence that the offender has breached a drug or alcohol condition:
 - (i) controlled drugs:
 - (ii) psychoactive substances:
 - (iii) alcohol.
- (2) In this section and in sections 80ZU and 80ZV, **chief executive** means the chief executive of the Department of Corrections.

80ZU Further provisions concerning rules about drug and alcohol testing and monitoring

- (1) Rules made under section 80ZT(1)(a) may, without limitation, prescribe testing procedures that do all or any of the following:
- (a) include, as part of the procedure, either or both of the following:
 - (i) breath screening:
 - (ii) the collection and analysis of a bodily sample:
 - (b) require an offender to be supervised by a person of the same sex as the offender during the collection of a bodily sample required for testing:
 - (c) provide for an offender to elect, if the offender meets in advance all actual and reasonable costs, to have part of a bodily sample (or 1 bodily sample from a set of samples collected at the same time) independently tested in a manner prescribed in the rules.
- (2) The chief executive may make rules under section 80ZT(1) only if satisfied that the rules—
- (a) prescribe testing procedures that are no more intrusive than is reasonably necessary to ensure compliance with a drug or alcohol condition; and

- (b) allow for offenders to be tested no more often than is reasonably necessary to ensure compliance with a drug or alcohol condition; and
 - (c) ensure that offenders liable to testing and monitoring are afforded as much privacy and dignity as is reasonably practicable.
- (3) Subsection (1)(b) overrides subsection (2)(c).

80ZV Availability of rules about drug and alcohol testing and monitoring, and status under Legislation Act 2012

- (1) The chief executive must ensure that any rules made under section 80ZT are, while in force, made available—
- (a) on an Internet site that is maintained by or on behalf of the Department of Corrections and that is, so far as practicable, publicly available free of charge; and
 - (b) for public inspection free of charge; and
 - (c) for purchase at a reasonable price.
- (2) Rules made under section 80ZT are disallowable instruments, but not legislative instruments, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Offence: post-imprisonment conditions

15 Section 93 amended (Imposition of conditions on release of offender sentenced to imprisonment for short term)

[Repealed]

Section 15: repealed, on 15 May 2017, by section 18(2).

16 New section 96A inserted (Offences related to post-imprisonment conditions that are drug or alcohol conditions)

After section 96, insert:

96A Offences related to post-imprisonment conditions that are drug or alcohol conditions

An offender who is subject to a post-imprisonment condition that is a drug or alcohol condition commits an offence, and is liable on conviction to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$2,000, if the offender—

- (a) refuses or fails, without reasonable excuse,—
 - (i) to undergo a testing procedure when required to do so under sections 80ZO(2)(a) and 80ZQ; or
 - (ii) to submit to continuous monitoring when required to do so under section 80ZO(2)(b); or

- (iii) to comply with instructions specified in a notice given under section 80ZO(2)(b) that are reasonably necessary for the effective administration of the continuous monitoring; or
- (iv) to accompany an authorised person, when required to do so under section 80ZQ(4), to a place where it is likely that it will be reasonably practicable for the offender to undergo testing; or
- (v) to contact a specified automated system when required to do so under section 80ZO(2)(c); or
- (vi) to report, at any time or times when required to do so under section 80ZQ(5), to a specified testing facility to undergo testing; or
- (vii) to undergo a testing procedure when required to do so under sections 80ZO(2)(c) and 80ZQ; or
- (b) does anything with the intention of diluting or contaminating a bodily sample required under section 80ZO(2)(a) or (c) for the purposes of a prescribed testing procedure; or
- (c) tampers with a drug or alcohol monitoring device required under section 80ZO(2)(b) or does anything with the intention of interfering with the functioning of that device.

17 Consequential amendments and transitional provisions if this Act in force before Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016

[Repealed]

Section 17: repealed, on 15 May 2017, by section 18(2).

18 Consequential amendments and transitional provisions if Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 in force before this Act

- (1) This section applies if the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 comes into force before this Act comes into force.
- (2) Sections 5, 7(2), 15, and 17 of this Act are repealed.
- (3) Amend Schedule 1AA of the principal Act as indicated in Part 2 of the Schedule of this Act.

Schedule

Consequential amendments and transitional provisions

ss 17, 18

Part 1

New Schedule 1AA inserted

Schedule 1AA

Transitional, savings, and related provisions

s 4A

Part 1

Provisions relating to Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016

1 Interpretation

In this Part, **commencement date** means the date on which the Sentencing (Electronic Monitoring of Offenders) Amendment Act 2016 comes into force.

2 Varying special conditions for sentence of intensive supervision imposed before commencement date

- (1) This clause applies to a sentence of intensive supervision imposed before the commencement date.
- (2) An electronic monitoring condition may be imposed in the circumstances specified in subclause (3) even though such a condition—
 - (a) was not available as a special condition before the commencement date; and
 - (b) could not have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence of intensive supervision was imposed.
- (3) The circumstances are as follows:
 - (a) if the court imposes additional special conditions under section 54K(3)(a):
 - (b) if the court cancels a sentence and substitutes a sentence of intensive supervision (that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed).

- 3 Varying release conditions for sentence of imprisonment of not more than 24 months imposed before commencement date**
- (1) This clause applies to a sentence of imprisonment of not more than 24 months imposed before the commencement date.
 - (2) An electronic monitoring condition may be imposed in the circumstances specified in subclause (3) even though such a condition—
 - (a) was not available before the commencement date; and
 - (b) could not have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence of imprisonment of not more than 24 months was imposed.
 - (3) The circumstances are as follows:
 - (a) if the court imposes an additional release condition under section 94(3)(a):
 - (b) if the court discharges a release condition and substitutes another release condition under section 94(3)(b).

Part 2

Provisions relating to Sentencing (Drug and Alcohol Testing) Amendment Act 2016

4 Interpretation

In this Part,—

commencement date means the date on which the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 comes into force

pre-commencement drug or alcohol condition means a condition of a sentence of supervision, intensive supervision, or home detention, or a post-detention or post-imprisonment condition,—

- (a) that is imposed before the commencement date under section 52(2)(c), 54I(3)(e), 80D(4)(e), 80N(1) and (2)(b), or 93(1) or (2)(b); and
- (b) that prohibits an offender from doing 1 or more of the following:
 - (i) using (as defined in section 4(1)) a controlled drug;
 - (ii) using a psychoactive substance;
 - (iii) consuming alcohol.

5 Testing and monitoring of offender subject to sentence of supervision with pre-commencement drug or alcohol condition

- (1) This clause applies if an offender is subject to a sentence of supervision with a pre-commencement drug or alcohol condition.

- (2) On and from the commencement date, sections 70AA and 80ZO to 80ZU, and any rules made under section 80ZT, apply in respect of the offender—
- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and
 - (b) as if the court had complied with section 80ZN(3) in respect of the condition.
- 6 Testing and monitoring of offender subject to sentence of intensive supervision with pre-commencement drug or alcohol condition**
- (1) This clause applies if an offender is subject to a sentence of intensive supervision with a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, sections 70B and 80ZO to 80ZU, and any rules made under section 80ZT, apply in respect of the offender—
- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and
 - (b) as if the court had complied with section 80ZN(3) in respect of the condition.
- 7 Testing and monitoring of offender subject to sentence of home detention with pre-commencement drug or alcohol condition**
- (1) This clause applies if an offender is subject to a sentence of home detention with a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, sections 80SA and 80ZO to 80ZU, and any rules made under section 80ZT, apply in respect of the offender—
- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and
 - (b) as if the court had complied with section 80ZN(3) in respect of the condition.
- 8 Testing and monitoring of offender subject to post-detention condition that is a pre-commencement drug or alcohol condition**
- (1) This clause applies if an offender is subject to a post-detention condition that is a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, sections 80UA and 80ZO to 80ZU, and any rules made under section 80ZT, apply in respect of the offender—
- (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and

- (b) as if the court had complied with section 80ZN(3) in respect of the condition.

9 Testing and monitoring of offender subject to post-imprisonment condition that is a pre-commencement drug or alcohol condition

- (1) This clause applies if an offender is subject to a post-imprisonment condition that is a pre-commencement drug or alcohol condition.
- (2) On and from the commencement date, sections 80ZO to 80ZU and 96A, and any rules made under section 80ZT, apply in respect of the offender—
 - (a) as if the pre-commencement drug or alcohol condition were a drug or alcohol condition imposed by a court on or after the commencement date; and
 - (b) as if the court had complied with section 80ZN(3) in respect of the condition.

Part 2

Consequential amendments

Insert as Part 2 of Schedule 1AA the Part 2 set out in Part 1 of this schedule.

Reprints notes

1 *General*

This is a reprint of the Sentencing (Drug and Alcohol Testing) Amendment Act 2016 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Sentencing (Drug and Alcohol Testing) Amendment Act 2016: section 18(2)