

Health Report

Exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for repositioning aircrew

Date due to MO: 20 October 2020 **Action required by:** 20 October 2020

Security level: IN CONFIDENCE **Health Report number:** 20201866

To: Hon Chris Hipkins, Minister of Health

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Maree Roberts	Deputy Director-General, System Strategy and Policy	

Action for Private Secretaries

Return the signed report to the Ministry of Health.

Date dispatched to MO:

Exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for repositioning aircrew

Purpose of report

This report recommends that you provide an exemption from clauses 8(2) and 8(3) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for Air New Zealand repositioning crew flying to New Zealand between 20 October and 3 November 2020.

Summary

- On 4 October 2020 the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (the Order) was amended to include strengthened regulations for aircrew who travel internationally.
- Under the Order aircrew are subject to different requirements to other arrivals to New Zealand. For example, New Zealand based aircrew are not required to enter managed isolation, although aircrew returning from certain high-risk layovers may be required to self-isolate.
- Aircrew member is defined in the Order to mean a person who is identified as a crew member on the crew manifest for the aircraft on which they arrive in New Zealand. This definition was used as the Ministry understood that all crew working on the flight should be included on the crew manifest (commonly known as the gendec).
- Since the amendment, it has come to the Ministry's attention that "repositioning crew" are not included on the gendec. It was not the Ministry's intention for repositioning crew to be subject to different rules to other aircrew as they present a similar risk profile.
- Repositioning crew are crew who are travelling in the course of their duties but are not working on the particular flight. For example, a repositioning crew member would be a person who works on an outbound flight but returns as a passenger on the inbound flight (or vice versa). There are a number of reasons why crew may be repositioning including because they have worked the maximum number of hours during a period, are surplus to requirements or if a member of the crew has become unwell (not with symptoms of COVID-19).
- Air New Zealand has requested an exemption from the Order for repositioning aircrew i.e. they wish these crew to be subject to the same rules as other aircrew.
- Under clause 15 of the Order you may exempt any person or class of person from the requirement to comply with any provision of the Order if you are satisfied that;
 - the exemption is necessary and desirable in order to promote the purposes of the COVID-19 Public Health Response 2020 Act (the Act) or the purposes of this Order; and

- the extent of the exemption is not broader than is reasonably necessary to address the matters giving rise to the exemption.
- When deciding whether to grant an exemption and what (if any) conditions to impose you must take into account my advice on the public health implications.
- My advice is that the exemption meets the purpose of the COVID-19 Public Health Response Act 2020 as granting the exemption poses a low risk of contributing to the outbreak or spread of COVID-19 in New Zealand.
- The scope of the exemption is limited and has strict precautions in place to ensure repositioning crew are low risk including:
 - The crew must have met the key safety standards for aircrew while overseas (which require use of PPE, physical distancing and self-isolation in the hotel while overseas); and
 - The crew must have undergone a public health risk assessment by a medical officer of health upon arrival in New Zealand and satisfied the medical officer of health that they pose a low risk of transmitting COVID-19.
- The effect of the exemption is that repositioning aircrew will be subject to the same provision as other aircrew.

We recommend you:

- a) **Note** that under the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 you may exempt any person or class of persons from the requirement to comply with any provision of the Order. Yes/No
- b) **Note** that under the Order you must take into account the advice of the Director-General when deciding whether to grant an exemption and what, if any, conditions to impose on an exemption. Yes/No
- c) **Note** that I consider there is a low risk that granting an exemption to repositioning aircrew will contribute to the outbreak or spread of COVID-19 in New Zealand. The risk associated with repositioning aircrew in general is low and a risk assessment will be completed of each repositioning crew member. Yes/No
- d) **Sign** the attached Exemption Notice that grants an exemption from clauses 8(2) and 8(3) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for Air New Zealand repositioning crew flying to New Zealand between 20 October and 3 November 2020. Yes/No

Dr Ashley Bloomfield
Director-General of Health

Date: 20/10/2020



Hon Chris Hipkins
Minister of Health

Date: 21/10/2020

Exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for repositioning aircrew

Background

1. On 4 October 2020 the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (the Order) was amended to include strengthened regulations for aircrew who travel internationally.
2. Under the Order aircrew are subject to different requirements to other arrivals to New Zealand. For example, New Zealand based aircrew are not required to enter managed isolation, although aircrew returning from certain high-risk layovers may be required to self-isolate.
3. Prior to 4 October aircrew were entirely exempt from any requirements under the Order including the requirement to enter managed isolation or undergo testing. The Ministry had released a range of guidance for aircrew and we understand that this guidance was being followed by Air New Zealand (which was at the time the only New Zealand-based commercial carrier flying international flights).
4. This guidance did not include a definition of aircrew and this had led to confusion from a number of parties as to who was eligible for the exemption. When the amended Order was drafted a definition of aircrew member was introduced to provide clarity around who the new regime applied to.
5. Aircrew member is defined in the Order to mean a person who is identified as a crew member on the crew manifest for the aircraft on which they arrive in New Zealand. This definition was used as the Ministry considered that all crew working on the flight should be included on the crew manifest (commonly known as the gendec).
6. Since the amendment, Air New Zealand has raised the issue that certain "repositioning" crew are not included on the manifest and therefore are not subject to the specific aircrew rules, but rather are subject to the rules for all other arrivals by air (requiring them to enter managed isolation for 14 days upon arrival to New Zealand).
7. Repositioning crew are crew who are travelling in the course of their duties but are not working on the particular flight. For example, a repositioning crew member would be a person who works on an outbound flight but returns as a passenger on the inbound flight (or vice versa). There are a number of reasons why crew may be repositioning including because they have worked the maximum number of hours during a period, are surplus to requirements or if a member of the crew has become unwell (not with symptoms of COVID-19).
8. Under previous guidance repositioning crew were treated as aircrew and were subject to the same exemptions from managed isolation. When drafting the Order there was no intention to exclude repositioning crew from the definition of aircrew, as it was understood that repositioning crew are included on the gendec, so there was no change to the underlying policy position.

9. Air New Zealand has a number of repositioning crew returning to New Zealand regularly and have requested an exemption from the Order for repositioning aircrew. Under the exemption crew will be subject to a risk assessment by a Medical Officer of Health to ensure that those specific crew are low risk.
10. The exemption as drafted will only apply to crew travelling until 3 November 2020. This will give the Ministry time to assess the immediate situation and to review the position in relation to repositioning crew over the next 2-3 weeks to determine if an amendment to the Order is justified. If an amendment to the Order has not been made by this time then a further exemption may be considered.

Statutory power for granting an exemption

11. Under clause 15 of the Order you may exempt any person or class of person from the requirement to comply with any provision of the Order if you are satisfied that:
 - a. the exemption is necessary and desirable in order to promote the purposes of the Act or the purposes of this Order; and
 - b. the extent of the exemption is not broader than is reasonably necessary to address the matters giving rise to the exemption.
12. When deciding whether to grant an exemption and what (if any) conditions to impose you must take into account my advice on the public health implications.
13. Section 4 of the Act outlines the Act's purpose as supporting a public health response to COVID-19 that –
 - a. Prevents, and limits the risk of, the outbreak or spread of COVID-19 (taking into account the infectious nature and potential for asymptomatic transmission of COVID-19); and
 - b. Avoids, mitigates, or remedies the actual or potential adverse effects of the COVID-19 outbreak (whether direct or indirect); and
 - c. Is co-ordinated, orderly, and proportionate; and
 - d. Allows social, economic, and other factors to be taken into account where it is relevant to do so; and
 - e. Is economically sustainable and allows for recovery of MIQF costs; and
 - f. Has enforceable measures, in addition to the relevant voluntary measures and public health and other guidance that also supports that response.

Preventing the spread of COVID-19

14. The risk of spreading COVID-19 to the community is evaluated taking into account:
 - a. Whether the group seeking an exemption are at lower risk of having been exposed to COVID-19;
 - b. Whether there are appropriate measures in place to reduce the risk of the spread of COVID-19 to the New Zealand community; and
 - c. Whether any conditions or mitigation measures are likely to be complied with and the associated risk if conditions are not complied with.

15. I consider that the exemption is unlikely to create a significant risk of spreading COVID-19 to the New Zealand community as the repositioning crew are at a low risk of contracting COVID-19, have taken appropriate precautions while overseas and will be subject to conditions on arrival in New Zealand which will provide additional assurance.

A lower risk of exposure to COVID-19

16. Aircrew are subject to key safety standards that they must meet as part of the Order including wearing PPE while overseas and meeting certain requirements for self-isolation while on layover. A condition of the exemption will be that crew have met these key safety standards at all times during their overseas travel.
17. Under the exemption crew will be subject to a risk assessment by a Medical Officer of Health. The Medical Officer of Health will determine whether the exemption should apply to the particular repositioning crew member taking into account the details of their international travel and repositioning arrangements (for example whether the repositioning crew were able to maintain separate seating from other passengers). If repositioning crew members are unwell it is unlikely that they will be considered to be eligible for the exemption.

Appropriate measures in place to reduce the risk of the spread of COVID-19 to the community

18. Any exemption request should be considered in conjunction with associated conditions to reduce the risk of the spread of COVID-19 to the community.
19. In this case aircrew are required to comply with all the same safety standards as other crew.

Compliance with any conditions

20. Consideration should also be given to whether individuals or groups are likely to comply with any conditions on the exemption and the potential impact if conditions are not complied with. The Ministry considers that the crew are highly likely to comply with the exemption as they are required to comply with the conditions regularly and are familiar with the requirements such as wearing PPE while on duty.

Other purposes under the Act

21. Other purposes under the Act may also be relevant when considering an exemption including the economic impact of the exemption. Air New Zealand have represented that if they do not receive an exemption it is likely that they have to cancel certain services which may have economic impacts.

Other factors to be taken into consideration

22. The exemption discretion must be exercised consistently with the New Zealand Bill of Rights Act 1990 (NZBORA).
23. In considering specific exemptions the Ministry will work alongside Crown Law and the Ministry of Justice to provide you with advice on any NZBORA implications associated with the exemption.

24.

s 9(2)(h)

25. The discretion to grant exemptions should be viewed in light of the restrictions imposed on other arrivals to New Zealand under the Isolation and Quarantine Order. If the exemption power is not exercised in line with the purpose of the COVID-19 Act this could have the effect of making managed isolation restrictions on others appear arbitrary and not proportionate to the public health risk.

Next steps

26. If you sign the attached Exemption Notice, the exemption will come into effect immediately and apply to crew travelling until 3 November 2020.
27. The Ministry will arrange for the Exemption Notice to be published online and in the Gazette.

ENDS.

PROACTIVELY RELEASED