

Briefing

COVID-19 Public Health Response (Air Border and Isolation and Quarantine) Amendment Order (No 2) 2020 for consultation

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|------------------------|--|------------------------------|-----------------|
| Date due to MO: | 4 December 2020 | Action required by: | 7 December 2020 |
| Security level: | IN CONFIDENCE | Health Report number: | 20202108 |
| To: | Hon Chris Hipkins, Minister for COVID-19 Response | | |
| Copy to: | Hon Dr Megan Woods, Minister of Housing Hon Michael Wood, Minister of Transport Hon Nanaia Mahuta, Minister of Foreign Affairs and Trade Hon Grant Robertson, Minister of Finance | | |

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 | s 9(2)(a) |

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Noted |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

COVID-19 Public Health Response (Air Border and Isolation and Quarantine) Amendment Order (No 2) 2020 for consultation

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| To: | Hon Chris Hipkins, Minister for COVID-19 Response |
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Purpose of report

1. This report recommends that you consult with the Prime Minister, the Minister of Justice and the Minister of Health on the attached draft COVID-19 Public Health Response (Air Border and Isolation and Quarantine) Amendment Order (No 2) 2020 (the Amendment Order).

Summary

2. On 24 November 2020, you agreed to adopt a number of amendments to improve the air border system, and the isolation and quarantine system [HR 20201934 refers].
3. The draft COVID-19 Public Health Response (Air Border and Isolation and Quarantine) Amendment Order (No 2) 2020 (the Amendment Order) attached as Appendix 1 would give effect to these changes, including:
 - a. an amendment to the definition of 'aircrew' to include repositioning aircrew;
 - b. exclusion from managed isolation for more classes of people;
 - c. amendments to the restrictions for New Zealand-based aircrew operating international flights; and
 - d. other changes and technical amendments.
4. To make or amend an Order under section 11 of the COVID-19 Public Health Response Act 2020 (COVID-19 Act) you must:
 - a. receive advice from the Director-General of Health about –
 - i. the risks of the outbreak or spread of COVID-19; and
 - ii. the nature and extent of measures that are appropriate to address those risks; and
 - b. have regard to any decision by the Government on how to respond to those risks and avoid, mitigate or remedy the effects of the outbreak or spread of COVID-19 (including taking into account any social, economic or other factors); and

- c. be satisfied that the proposed Order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990; and
 - d. consult with the Prime Minister, the Minister of Justice, the Minister of Health and any other Ministers you think necessary; and
 - e. be satisfied that the Order is appropriate to achieve the purpose of the COVID-19 Act.
5. Officials have worked closely with the Ministry of Transport, the Ministry of Foreign Affairs and Trade, Ministry for Business Innovation and Employment and other stakeholders to develop the proposed amendments and will continue to work to ensure smooth implementation. Note however, that many of the amendments are minor and technical in nature and will not involve any operational changes.
6. Following Ministerial consultation, officials will finalise the Amendment Order, and provide you with a version for signing on or before 16 December 2020.

Recommendations

We recommend you:

- a) **Note** the attached draft COVID-19 Public Health Response (Air Border and Isolation and Quarantine) Amendment Order (No 2) 2020 gives effect to the policy as previously agreed in HR20201934. **Noted**
- b) **Note** that advice from the Director-General of Health is that the COVID-19 Public Health Response (Air Border and Isolation and Quarantine) Amendment Order (No 2) 2020 is in line with the purpose of the COVID-19 Public Health Response Act 2020 to prevent, and limit the risk of, the outbreak or spread of COVID-19, by further refining the system for managing all arrivals into New Zealand from overseas. **Noted**
- c) **Agree** to consult with the Prime Minister, Minister of Justice and the Minister of Health on the attached draft COVID-19 Public Health Response (Air Border and Isolation and Quarantine) Amendment Order (No 2) 2020. **Yes, No**



Dr Ashley Bloomfield

Director-General of Health

Date: 4/12/2020



Hon Chris Hipkins

Minister for COVID-19 Response

Date: 11/12/2020

COVID-19 Public Health Response (Air Border and Isolation and Quarantine) Amendment Order (No 2) 2020 for consultation

Background

7. On 24 November 2020, you agreed to make several amendments to our air border and isolation and quarantine system [HR 20201934 refers].
8. These amendments can be made to the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (Air Border Order) and COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (Isolation and Quarantine Order).
9. The COVID-19 Public Health Response (Air Border and Isolation and Quarantine) Amendment Order (No 2) 2020 (the Amendment Order), as drafted, would give effect to your policy decision above, including:
 - a. an amendment to the definition of 'aircrew' for repositioning crew;
 - b. exclusion from managed isolation for more classes of people;
 - c. amendments to the restrictions for New Zealand-based aircrew operating international flights; and
 - d. a number of other changes and technical amendments.

Contents of the draft Amendment Order

Amendment 1: Definition of 'aircrew'

10. Under the proposed Amendment Order, as drafted, the definition of 'aircrew member' in the Air Border Order is amended to include 'repositioning crew'. This will ensure that repositioning crew are not subject to managed isolation under the Air Border Order, in line with other returning New Zealand-based aircrew.
11. Note that repositioning crew does not include horse grooms or crew ferrying aircraft overseas and returning as passengers. These crew will be required to enter managed isolation upon return, due to the higher public health risk associated with returning as passengers on commercial flights.

Amendment 2: Exemptions from managed isolation

12. Under the proposed Amendment Order, there are a number of new groups with specific exemptions from managed isolation.

Pilots travelling to Australia for training purposes

13. Pilots returning from flight simulator training that is not available in New Zealand will be exempt from managed isolation upon their return, provided that:
 - a. they follow the key safety standards at all times while overseas (except to the extent that they leave their accommodation and travel to the training facility); and
 - b. upon return to New Zealand, they self-isolate for at least 48 hours, undergo a COVID-19 test and then continue to self-isolate until they return a negative result.
14. If there is evidence to show that these conditions have not been met, returning pilots may be required to enter a managed isolation or quarantine facility.
15. Note that this proposed amendment is in line with the recent decision you made to grant exemptions to Jetconnect and Tasman Cargo from managed isolation [HR 20202043].

Police escorts of deportees

16. New Zealand Police escorting deportees out of New Zealand will be exempt from managed isolation on their return, provided that:
 - a. they follow the key safety standards at all times while overseas (except to the extent that they are performing their duties); and
 - b. upon return to New Zealand, they self-isolate for at least 48 hours, undergo a COVID-19 test and then continue to self-isolate until they return a negative result.
17. If there is evidence to show that these conditions have not been met, returning Police may be required to enter a managed isolation or quarantine facility.
18. Officers involved in these transfers do not go landside, but hand over the deportee to the Police or relevant authorities in the receiving country.
19. Police have been unable to perform this important function during most of 2020, as the requirement to enter managed isolation for 14 days upon return to New Zealand makes it operationally unviable.

International assistance teams travelling to New Zealand

20. Following a large scale, rapid onset emergency event, New Zealand will likely request immediate support from international partners for lifesaving activities e.g. medical and urban search and rescue resources. The first 72 hours immediately following a major emergency are considered the most critical for international assistance to be effective.
21. Further specialist subject matter expertise may be required for disaster victim identification or critical infrastructure.
22. It is essential that these crews can enter New Zealand at short notice, without the requirement for 14 days managed isolation.

23. People will be exempt from managed isolation if they have arrived in New Zealand for the sole purpose of assisting in civil defence emergency management during a state of emergency, and the National Emergency Management Agency supports their arrival in New Zealand for that purpose.

People entering from Antarctica

24. People arriving to New Zealand from the Ross Dependency/Antarctica as a member of a scientific programme or expedition, who have been determined to pose a negligible public health risk by a Medical Officer of Health, will be exempt from the requirement to enter managed isolation.
25. If a Medical Officer of Health determines that those people pose a public health risk that is greater than negligible, they have a discretion to require those people to enter a managed isolation or quarantine facility.

Amendment 3: Restrictions for New Zealand-based aircrew

26. The proposed Amendment Order contains several changes for New Zealand-based aircrew.

Requirements for self-isolation on overseas layovers

27. Aircrew will be permitted to leave their allocated rooms on overseas layovers to:
- a. access food within the hotel;
 - b. exercise (but not use the hotel gym, pool, sauna or other shared facilities); and
 - c. socialise (only with their fellow aircrew) in an area which is set aside for the exclusive use of aircrew of the airline for which the aircrew member works. This cannot be in a hotel restaurant, bar or other room that is shared with members of the public or hotel staff.

Requirements for self-isolation in New Zealand

28. Aircrew will be permitted to leave their place of residence in New Zealand during self-isolation to exercise, so long as they maintain physical distancing from all other persons.

Medical attendants

29. Medical attendants will be required to follow the same requirements as other aircrew when overseas, that is self-isolating on any overseas layovers, and following the key safety standards in transit and on layovers, along with the existing requirement to self-isolate for 48 hours and return a negative COVID-19 test upon returning to New Zealand.
30. All medical attendants returning from overseas duty will be subject to a risk assessment by a Medical Officer of Health and be required to enter managed isolation if it is determined that they pose a higher risk of having or transmitting COVID-19. The risk assessment can be undertaken prior to arrival back in New Zealand, based on the planned route and duration of the trip.

Management of returning aircrew

31. All aircrew returning to New Zealand will be required to:
- undergo a health assessment upon arrival, and satisfy a suitably qualified health practitioner that they are at a low risk of transmitting COVID-19; and
 - if they cannot do this, enter a managed isolation or quarantine facility (for example, if they present with symptoms, or there is some other reason that they may not be considered a low risk for transmitting COVID-19).

Risk profile for New Zealand-based aircrew

32. Aircrew returning to New Zealand who have been overseas for longer than 7 days, or who have travelled domestically overseas, will be required to undergo a risk assessment by a Medical Officer of Health, and may be required to enter managed or self-isolation based on the outcome of the risk assessment.

Amendment 4: Other changes

Flights returning to New Zealand

33. The proposed Amendment Order slightly amends the current Air Border Order to ensure that if an airplane leaves New Zealand and has to turn around without landing in a different jurisdiction (for example, for a medical emergency or a mechanical fault), those people will not be subject to managed isolation in New Zealand.

Other place of isolation or quarantine

34. When considering whether to allow a person to complete isolation or quarantine in another place, the Medical Officer of Health will be required to consider all the relevant individual and operational implications of the request. This would include explicit consideration of whether the person's needs can be adequately met in a standard isolation or quarantine facility and where the alternative place of isolation or quarantine should be.
35. MBIE would remain responsible for implementing any approved request (including transport logistics and compliance monitoring) with the Medical Officer of Health providing further information necessary to inform those plans.

Amendment 5: Minor technical changes

36. The proposed Amendment Order as drafted contains several other minor technical amendments to provide clarity and ensure that the policy intent of the Orders is met. These technical changes are summarised in the table in Appendix 2.

Process for amending a section 11 Order

37. Under the COVID-19 Act, an Order may be made if either:
- a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002);
 - an Epidemic Notice is in force (under the Epidemic Preparedness Act 2006); or

- c. it has been authorised by the Prime Minister.
38. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the COVID-19 Act.
39. As the Minister for COVID-19 Response, you may make Orders under section 11 of the COVID-19 Public Health Response Act 2020 (the Act).
40. To make an Order under section 11 you must:
- a. have received advice from the Director-General about –
 - i. the risks of the outbreak or spread of COVID-19; and
 - ii. the nature and extent of measures that are appropriate to address those risks; and
 - b. be satisfied that the proposed Order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA); and
 - c. consult with the Prime Minister, the Minister of Justice and any other Ministers you think necessary; and
 - d. be satisfied that this Order is appropriate to achieve the purposes of the Act.
41. Officials note that it is anticipated the COVID-19 Public Health Response Act 2020 Amendment Bill, which passed in the House on 2 December 2020, is anticipated to receive Royal Assent on Monday 7 December, and commence the following day. Therefore, it is likely that from Tuesday 8 December you will also be required to consult with the Minister of Health (as well as the Prime Minister and Minister of justice, as currently required) on this Amendment Order.
42. My advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to manage those risks is set out below.

Public health rationale for amendments

43. You have previously been provided with detailed public health rationale for the proposed amendments [HR 20201934 refers].
44. You are receiving ongoing advice about the risks associated with COVID-19. In accordance with section 9(2) of the Act, you may have regard to that advice without it being repeated here.
45. COVID-19 is a highly infectious disease which may be spread by people who are not showing symptoms. This supports significant measures for those at heightened risk of contracting or spreading COVID-19 to identify potential cases and reduce risk.

New Zealand Bill of Rights Act 1990

46. A matter for you to consider each time an Order is proposed under the COVID-19 Public Health Response Act 2020 is whether the exercise of such powers will be appropriate. The power to make an Order under section 11 of the Act must be exercised consistently with NZBORA.
47. A number of rights are engaged by the proposed amendments including:
- a. the right to freedom of movement under section 18;

- b. the right to freedom of association under section 17;
 - c. the right to refuse to undergo medical treatment under section 11;
 - d. the right to be secure against unreasonable search or seizure under section 21; and
 - e. the right to be free from arbitrary detention under section 22.
48. It is considered that insofar as the rights noted above are engaged and limited by the amendments, any limitations are justifiable in a free and democratic society, noting that:
- a. the amendments are risk-based, and impositions on individuals' rights are directly proportionate to the level of risk of COVID-19 transmission associated with their entry into New Zealand;
 - b. testing and mandatory self-isolation, where imposed, are the least restrictive interventions which could mitigate the risk of COVID-19 transmission to an acceptable level; and
 - c. given the seriousness of the COVID-19 pandemic and its risks to public health, testing and mandatory self-isolation are justifiable insofar as they avoid significant limitations on the freedoms and lives of all New Zealanders (either due to the impacts of COVID-19 infection, or due to other reasonable-but-restrictive public health measures which would otherwise be required to contain COVID-19 outbreaks).
49. Many of the amendments for aircrew, outlined above, are intended to better protect their ongoing mental and physical wellness. Alleviating restrictions on exercising and interacting with other aircrew while on layovers are designed to enhance the rights of people detained to be treated with humanity and respect for inherent dignity (section 23(5) of NZBORA), and ensure that any limitations on rights are no more than is reasonably necessary.
50. You have previously been provided with more detailed advice about the potential NZBORA implications of these proposals [HR 20201934].

Implementation

51. Officials have worked closely with the Ministry of Transport, the Ministry of Foreign Affairs and Trade, Ministry for Business Innovation and Employment and other stakeholders to develop the proposed amendments and will continue to work to ensure smooth implementation. Note however, that many of the amendments are minor and technical in nature and will not involve any operational changes.

Next steps

52. As per the Act, you must consult on the proposed amendments with the Prime Minister, the Minister of Justice and the Minister of Health.
53. Following Ministerial consultation, officials will finalise the Amendment Order, and provide you with a version for signing on or before 16 December 2020.

ENDS.

Appendix 1: Draft COVID-19 Public Health Response (Air Border and Isolation and Quarantine) Amendment Order (No 2) 2020

The final order is publicly available at:
<https://www.legislation.govt.nz/regulation/public/2020/0330/latest/LMS437598.html>

PROACTIVELY RELEASED

Appendix 2: Minor technical amendments

There are several other minor technical amendments to the Orders, outlined in the table below.

| Issue description | Relevant Order | Amendment |
|--|--|--|
| There are no enforcement measures or penalties available if returnees deliberately abscond from transport to and/or from a managed isolation and quarantine facility. | Air Border Order | Clarify that transport to and from managed isolation and quarantine forms part of the isolation and quarantine requirement under the Order and subject to enforcement if infringed. This is consistent with the overall policy related to people leaving managed isolation without authority. |
| The term 'transit' creates confusion, as it has a different meaning to the definition of 'transit' under immigration settings. | Isolation and Quarantine Order (clause 11) | Minor change to the sub-heading of clause 11 to clarify the meaning of transit. |
| The Chief Executive (CE) of MBIE has the ability to permit a person to leave their place of isolation or quarantine (for example, to attend court), but there is no specific no ability to impose conditions (for example to wear PPE or social distance) when leaving the place of isolation. This creates some inconsistencies across managed isolation exemption categories and limits the ability to manage risk around some exemptions. | Isolation and Quarantine Order (clause 13) | <p>Include the ability for the CE of MBIE to impose conditions, such as wearing PPE or social distance from others, to align with other exemption clauses.</p> <p>This reflects the policy intent of the original Order. The CE will be required to impose conditions based on public health advice.</p> |