

Briefing

Regulatory changes to enable quarantine-free travel – for consultation

Date due to MO: 12 February 2021 **Action required by:** 16 February 2021

Security level: IN CONFIDENCE **Health Report number:** 20202326

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	

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 Withdrawn | |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:

Regulatory changes to enable quarantine-free travel – for consultation

Security level: IN CONFIDENCE

Date: 12 February 2021

To: Hon Chris Hipkins, Minister for COVID-19 Response

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 of the COVID-19 Public Health Response (Air Border and Maritime Border) Amendment Order 2021.

Summary

2. On 20 December 2020, you agreed to amend the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (Air Border Order) and the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 (Maritime Border Order) to enable quarantine-free travel with countries that have entered into a quarantine-free travel arrangement with New Zealand [HR 20202048 refers].
3. The draft COVID-19 Public Health Response (Air Border and Maritime Border) Amendment Order 2021 (amendment Order) attached as Appendix 1 would give effect to this proposal by amending the Air Border Order to:
 - a. exempt from quarantine requirements passengers travelling on flights from a country who have entered into a quarantine-free travel arrangement with New Zealand;
 - b. provide that airlines should only allow passengers on quarantine-free flights who meet the quarantine-free travel conditions; and
 - c. empower the Minister for COVID-19 Response to suspend the exemption for flights from a partner country, or a specified part of that country, if there is reasonable cause to believe that doing so will prevent or limit the risk of an outbreak or spread of COVID-19 in New Zealand or another partner country.
4. The draft amendment Order would also amend the Maritime Border Order to:
 - a. provide a power to exempt from quarantine requirements persons arriving in New Zealand by ship from a country that has entered into an arrangement with New Zealand allowing quarantine-free travel by sea;
 - b. provide that crew members will only be exempt if each person on board the ship meets all the quarantine-free travel conditions;
 - c. require the ship's master or agent to apply for an exemption from the quarantine requirements to the Director-General of Health, who may grant the exemption if

there are reasonable grounds to believe the quarantine-free travel conditions have been satisfied; and

- d. empower the Director-General to revoke the exemption for ships travelling from a partner country, or a specified part of that country to limit the risk of an outbreak or spread of COVID-19 in New Zealand or another partner country, or if the quarantine-free travel conditions are no longer met.
5. 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;
 - 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);
 - 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;
 - 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.
6. Officials have worked closely with the Ministry of Foreign Affairs and Trade, the Ministry of Transport, the Ministry for Business Innovation and Employment, the New Zealand Customs Service and other stakeholders to develop the proposed amendments and will continue to work to ensure smooth implementation.
7. Following Ministerial consultation, officials will finalise the draft amendment Order, and provide you with a version for signing on or before 12 March 2021.

Recommendations

We recommend you:

- a) **Note** the attached draft COVID-19 Public Health Response (Air Border and Maritime Border) Amendment Order 2021 gives effect to the policy as previously agreed in HR 20202048. **Noted**
- b) **Note** that advice from the Director-General of Health is that the draft amendment Order 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 draft COVID-19 Public Health Response (Air Border and Maritime Border) Amendment Order 2021. ☒ Yes ☐ No



Dr Ashley Bloomfield
Director-General of Health
Date: 12/02/2021



Hon Chris Hipkins
Minister for COVID-19 Response
Date: 5/3/2021

PROACTIVELY RELEASED

Regulatory changes to enable quarantine-free travel for consultation

Background

1. On 20 December 2020, you agreed to amend our air and maritime border system to enable quarantine-free travel with countries that have entered into a quarantine-free travel arrangement with New Zealand [HR 20202048 refers]
2. These amendments need to be made to the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (Air Border Order) and COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 (Maritime Border Order).
3. The COVID-19 Public Health Response (Air Border and Maritime Border) Amendment Order 2021, as drafted, would give effect to your policy decision above, including:
 - a. amendments to exempt flights and ships travelling from partner countries from isolation and quarantine requirements;
 - b. inclusion of quarantine-free travel conditions that people travelling from partner countries must satisfy; and
 - c. provisions allowing the Minister for COVID-19 response to suspend quarantine-free travel for a specified period or indefinitely.

Contents of the draft Amendment Orders

Amendments to the Air Border Order

4. The Air Border Order requires all persons who arrive in New Zealand by air (with a few exemptions for air crew, maritime crew travelling to their ship, medical attendants and diplomats) to go into a Managed Isolation and Quarantine Facility (MIQF) for at least 14 days on arrival.

Exempting flights from partner countries

5. To enable quarantine-free air travel to New Zealand, the amendment Order will exempt people travelling from a partner country by air from the isolation and quarantine requirements set out in clause 8 of the Air Border Order
6. A country that has entered into a quarantine-free travel arrangement with New Zealand will be designated as a quarantine-free travel place by way of a notice issued by the Minister after the arrangement has been negotiated and agreed. If the circumstances require, the Minister may restrict the quarantine-free travel place to one or more regions within the country.
7. Not all flights from a partner country will meet the eligibility criteria (and vice versa). An air carrier may still operate flights where passengers must enter a MIQF on arrival (for instance, because the flight is carrying transit passengers or replacement crew members for commercial ships operating in New Zealand waters). Quarantine-free travel will only apply if the Director-General has designated the relevant port in New Zealand as a quarantine-free travel port, and the air carrier as a quarantine-free travel carrier. The air

carrier must ensure that each passenger on board a quarantine-free flight meets the eligibility criteria and has made a health declaration.

Passenger quarantine-free travel conditions

8. To ensure passengers are in good health when travelling to New Zealand from a partner country (and vice versa), passengers will not be eligible to undertake quarantine-free travel if in the past 14 days they:
 - a. have travelled outside New Zealand and the partner country; or
 - b. have been diagnosed with COVID-19 or are awaiting the results of a COVID-19 test.
9. Passengers will also not be eligible to undertake quarantine-free travel if they are a “high-risk traveller” as designated by the Minister for COVID-19 Response, which will allow the Minister to prevent travellers arriving in New Zealand quarantine-free who have recently visited an area in which there has been an outbreak of COVID-19.
10. Passengers will be required to declare that they have not experienced any symptoms of COVID-19 in the past 3 days (namely loss of smell, coughing, fever, difficulty breathing, sneezing and a runny nose, and a sore throat), and that based on those symptoms they have been advised by a health practitioner that they should be isolated or quarantined.
11. As an additional layer of assurance, passengers will not be exempt from the requirement to report for and undergo a medical examination upon arriving in New Zealand. If a health practitioner considers that a person is at a high risk of having or transmitting COVID-19 they may be transferred to a managed facility and remain there until they have obtained a negative COVID-19 test.

Suspension of quarantine-free travel

12. If there is a material change in the public health situation in a partner country, or a specified part of that country, following commencement of quarantine-free travel, the Minister for COVID-19 Response may revoke the designation and thereby suspend quarantine-free travel for a specified period or indefinitely. This should only occur if there is reasonable cause to believe that doing so will prevent or limit the risk of an outbreak or spread of COVID-19 in New Zealand or another partner country

Amendments to the Maritime Border Order

13. Although quarantine-free travel with the Cook Islands will be limited to air travel, the Trans-Tasman arrangement covers all modes of travel between New Zealand and Australia, with the exception from cruise ships with the capacity to carry 100 or more passengers. Commercial maritime vessels will be included from commencement, with other maritime travel to be included at a later date as mutually determined by the two Governments.
14. The Maritime Border Order requires all permitted arrivals by sea to remain in quarantine on their ship (or go into a MIQF) for at least 14 days since last contact with someone outside the vessel, and for all crew to meet the low-risk indicators before any crew may enter the New Zealand community.

Exempting ships from partner countries

15. The amendment Order will allow the Director-General of Health to exempt certain ships from quarantine requirements upon arrival in New Zealand. The Director-General may

only do this for ships travelling from a country that has entered into an arrangement with New Zealand allowing quarantine-free travel by sea.

Crew quarantine-free travel conditions

16. Crew members on board a ship that arrives from a partner country must satisfy the same quarantine-free travel conditions as passengers travelling by air.
17. The agent or master of the ship will need to apply for an exemption from quarantine requirements for their crew. Exemptions will be granted on a case-by-case basis by the Director-General of Health. For instance, exemptions will not be granted if a crew member has joined the vessel in the last 14 days from a country that does not have quarantine-free travel to New Zealand.

Suspension of quarantine-free travel

18. The Director-General of Health will be able to revoke the exemption for ships travelling from a partner country, or a specified part of that country to limit the risk of an outbreak or spread of COVID-19 in New Zealand or another partner country, or if the quarantine-free travel conditions are no longer met.

Other amendments

19. The proposed Amendment Order as drafted contains some minor technical amendments to provide clarity to the Air Border Order and Maritime Border Orders and ensure that the policy intent of these instruments is met. These technical changes are summarised in the table in Appendix 2.

Process for amending a section 11 Order

20. Under the COVID-19 Act, an Order may be made if either:
 - a. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002);
 - b. an Epidemic Notice is in force (under the Epidemic Preparedness Act 2006); or
 - c. it has been authorised by the Prime Minister.
21. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the COVID-19 Act and, as the Minister for COVID-19 Response, you may make Orders under this section.
22. 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 Health, 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 COVID-19 Act.
23. 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

24. You have previously been provided with detailed public health rationale for the proposed amendments [HR 20202048 refers].
25. You are also receiving ongoing advice about the risks associated with COVID-19. In accordance with section 9(2) of the COVID-19 Act, you may have regard to that advice without it being repeated here.
26. 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

27. A matter for you to consider each time an Order is proposed under the COVID-19 Act 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.
28. The proposed amendments to the Air Border Order and Maritime Border Order should be viewed in light of the restrictions imposed on other arrivals to New Zealand under the COVID-19 Public Health (Isolation and Quarantine) Order 2020. If the ability to exempt travellers from partner countries from quarantine requirements 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.
29. Exempting travellers from partner countries from the requirement to enter managed isolation upon arrival in New Zealand does not limit rights protected under NZBORA, as it lessens the restrictions on freedom of movement otherwise imposed by the Order.

Implementation

30. Officials have worked closely with the Ministry of Transport, the Ministry of Foreign Affairs and Trade, the Ministry for Business Innovation and Employment, the New Zealand Customs Service and other stakeholders to develop the proposed amendments and will continue to work to ensure smooth implementation.

Next steps

31. As per the COVID-19 Act, you must consult on the proposed amendments with the Prime Minister, the Minister of Justice and the Minister of Health.
32. Following Ministerial consultation, officials will finalise the amendment Order, and provide you with a version for signing on or before 12 March 2021.

ENDS.

Appendix 1: Draft COVID-19 Public Health Response (Air Border and Maritime Border) Amendment Order 2021

The final order is available at: <https://legislation.govt.nz/regulation/public/2022/0047/latest/LMS650798.html>

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Appendix 2: Minor technical changes

There are some minor technical amendments that are being made to the Air Border Order and Maritime Border Order, outlined in the table below

Issue description	Relevant Order	Amendment
Although a person is required to produce evidence of a negative COVID-19 test result, it is unclear what type of evidence is required and how accurate it may be.	Air Border Order (clause 8)	Specify that a person must produce 'appropriate evidence' of a 'specified COVID-19 test' as this will ensure the test is of an appropriate standard.
The proposed amendments refer to 'designation'. This has created an inconsistency with existing terminology.	Air Border Order (clause 11)	Replace the term 'notice' with the term 'designation' to avoid inconsistency.
A person arriving by air in New Zealand who is a member of the crew of a ship is exempt from the quarantine and isolation requirements in clause 8. While they are required to undergo pre-departure testing, they are not required to report for a medical examination on arrival.	Air Border Order (new clause 18A)	Clarify that a person arriving in New Zealand who is a member of the crew of a ship is not exempt from the requirement to report for a medical examination on arrival. Move the clause exempting persons from pre-departure testing requirements (existing clause 20A) to sit alongside this provision.
Although specified aircrew are currently exempt from the requirements in clauses 8(2A) and 8(2B), these exemptions are found in different provisions.	Air Border Order (clause 20)	Move the exemptions for specified aircrew to the same provision.
The wording of the provision allowing the Director-General to grant exemptions to emergency workers is unclear.	Air Border Order (clause 27)	Improve wording of the provision allowing the Director-General to grant exemptions to emergency workers.
The cross-reference is incorrect.	Maritime Border Order (clause 12(2))	Change the cross-reference to clause 11(1)(c).
The cross-reference is incorrect.	Maritime Border Order (clause 17(1))	Delete the reference to clause 19(2).
The heading is incorrect.	Maritime Border Order (clause 19)	Reword the heading to this provision.

The cross-reference is incorrect.	Maritime Border Order (clause 23)	Change the cross-reference to clause 17(3)(b).
The wording of the provision is confusing.	Maritime Border Order (clause 25)	Replace the word "extend" with "extent".

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