

# Briefing

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

<b>Date due to MO:</b>	28 January 2021	<b>Action required by:</b>	29 January 2021
<b>Security level:</b>	IN CONFIDENCE	<b>Health Report number:</b>	20210102
<b>To:</b>	Hon Chris Hipkins, Minister for COVID-19 Response		

### Contact for telephone discussion

Name	Position	Telephone
<b>Dr Ashley Bloomfield</b>	Director-General of Health	s 9(2)(a)
<b>Maree Roberts</b>	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 Withdrawn |  |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:

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

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**Security level:** IN CONFIDENCE      **Date:** 28 January 2021

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

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## Purpose of report

1. This briefing recommends you grant a further exemption for international aircrew from the requirement to undergo pre-departure testing (PDT). This would involve you granting an exemption from clause 8(2B) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (the Air Border Order).
2. The existing suite of measures imposed on airlines include the requirement for all overseas-based aircrew entering New Zealand to stay in a MIF (in particular the day 0/1 testing), and regular testing for MIF workers. In addition, the recommended exemption requires overseas-based aircrew to provide evidence of a negative COVID-19 test no more than seven days before arrival in New Zealand to ensure that the intent of PDT under the Air Border Order is not undermined.

## Summary

3. On 15 January 2021, an amendment to the Air Border Order came into force. The Air Border Order now requires passengers arriving in New Zealand from a 'specified place' to have evidence of a negative COVID-19 test result, taken no more than 72 hours before beginning a journey to New Zealand.<sup>1</sup>
4. The Director-General of Health has designated most of the world (except for Australia, Antarctica and some Pacific Islands<sup>2</sup> due to their assessed low risk of COVID-19 transmission) as 'specified places' for the purposes of PDT.
5. The PDT requirements ensure that there is a reduced risk of arrivals into New Zealand having COVID-19.
6. On 15 January 2021, you signed an interim exemption for overseas-based aircrew from PDT requirements so that officials could determine whether the requirements would

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<sup>1</sup> The policy advice for this approach is contained in the briefing Implementation of Pre-departure Testing for Arrivals to New Zealand (DPMC-2020/21-408 refers).

<sup>2</sup> The Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Caledonia, Niue, Palau, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, and Willis and Futuna.

pose any adverse operational impacts or other unintended consequences [HR 20210032 refers]. This exemption lasted two weeks (from 11:59 pm Friday 15 January 2021 to 11:59 pm Friday 29 January 2021).

7. Airlines reported that PDT requirements are excessively burdensome for them to comply with, particularly due to variable aircrew schedules all around the world. However, they are eager to comply with equivalent, but less operationally burdensome requirements, that would achieve the same level of COVID-19 risk reduction.
8. Officials' view is that we can achieve a similar level of protection from COVID-19 as PDT for overseas-based aircrew through a combination of:
  - a. the existing suite of measures imposed on airlines including the requirement for all overseas-based aircrew entering New Zealand to stay in a MIF (in particular the day 0/1 testing), and regular testing for MIF workers; and
  - b. the new addition of seven-day testing for all overseas-based aircrew arriving in New Zealand to provide an added layer of protection.
9. Public health advice is that this combination of measures provides a good level of assurance that no cases of COVID-19 are crossing our border via overseas-based aircrew. This approach ensures that public health requirements are balanced with operational and administrative viability.
10. Following discussions with the airlines, officials consider that a permanent exemption for overseas-based aircrew should be granted. However, officials propose a condition on the exemption that would require overseas-based aircrew to provide evidence of a negative COVID-19 test result from no more than seven days before their arrival in New Zealand.
11. This exemption avoids the identified operational issues with the current 72-hour PDT requirements for overseas-based airlines, and officials have been advised that the seven-day testing requirement can be implemented effectively.
12. If you agree to the exemption and the proposed condition, officials recommend that you sign the attached Exemption Notice in Appendix 2. As the current exemption expires on Friday 29 January 2021, officials advise that you sign on or before this date to avoid network disruption.
13. I advise that providing this exemption is unlikely to create a significant risk of spreading COVID-19 to the New Zealand community.

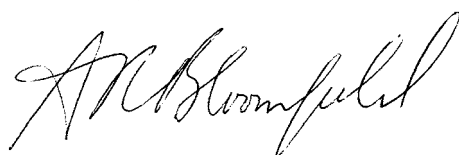
## Recommendations

We recommend you:

- a) **Note** 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. **Noted**
- b) **Note** under the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 you must take into account the advice of the Director-General of Health **Noted**

when deciding whether to grant an exemption and what, if any, conditions to impose on an exemption.

- c) **Note** you granted a two-week exemption for overseas-based aircrew from clause 8(2B) (pre-departure testing requirement) to enable work to determine the full impact of clause 8(2B) on overseas-based aircrew. **Noted**
- d) **Note** officials' view is that we can achieve a similar level of protection to PDT for overseas-based aircrew through a combination of: **Noted**
- a. the existing suite of measures imposed on airlines including the requirement for all overseas-based aircrew entering New Zealand to stay in a MIF (in particular the day 0/1 testing), and regular testing for MIF workers; and
  - b. the new addition of seven-day testing for all overseas-based aircrew arriving in New Zealand to provide an added layer of protection.
- e) **Agree** to a permanent class exemption to clause 8(2B) for overseas-based aircrew, with the condition that they provide evidence of a negative COVID-19 test no more than seven days before their arrival in New Zealand. **Yes/No**
- f) **Note** I consider there is a low risk that granting this exemption will contribute to the outbreak or spread of COVID-19 in New Zealand. **Noted**
- g) **Note** if you agree to this exemption, I recommend that it be granted immediately in order to come into force before the expiry of the temporary exemption at 11.59 pm on 29 January 2021. **Noted**
- h) **Sign** the attached Exemption Notice which grants a class exemption from clause 8(2B) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for overseas-based aircrew, with conditions to reflect an agreed set of arrangements for overseas-based aircrew. **Yes/No**
- i) **Forward** a copy of this Briefing to your Ministerial colleagues: Hon Michael Wood, Minister of Transport; Hon Meka Whaitiri, Minister of Customs; and Hon Nanaia Mahuta, Minister of Foreign Affairs. **Yes/No**



Dr Ashley Bloomfield  
**Director-General of Health**

Date: 28/01/2020



Hon Chris Hipkins  
**Minister for COVID-19 Response**

Date: 29/1/21

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

## Background

14. On 15 January 2021, an amendment to the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (Air Border Order) came into force.
15. The Air Border Order now requires passengers arriving in New Zealand from a 'specified place' to have evidence of a negative COVID-19 test result, taken no more than 72 hours before beginning a journey to New Zealand.<sup>3</sup>
16. The Director-General of Health has designated most of the world (except for Australia, Antarctica and some Pacific Islands<sup>4</sup> due to their assessed low risk of COVID-19 transmission) as 'specified places' for the purposes of pre-departure testing (PDT).
17. The PDT requirements ensure that there is a reduced risk of passengers arriving in New Zealand with COVID-19.

## Interim exemption for overseas-based aircrew

18. On 15 January 2021 you agreed to grant an interim exemption for overseas-based aircrew from PDT requirements so that Ministry of Health and Ministry of Transport officials could determine whether the requirements would have any unintended consequences (e.g. severe operational) [HR 20210032 refers]. This exemption lasted two weeks (from 11:59 pm Friday 15 January 2021 to 11:59 pm Friday 29 January 2021).

## Officials have undertaken work to determine whether PDT requirements are workable for overseas-based aircrew

19. Officials worked with Ministry of Transport officials and the Board of Airline Representatives New Zealand (BARNZ) to determine whether the 72-hour PDT requirement is workable for overseas-based aircrew.

## Ministry of Transport and BARNZ have advised officials that PDT will cause significant operational challenges

20. The Ministry of Transport and BARNZ have consulted with industry stakeholders and have advised officials that the 72-hour PDT requirement will cause significant operational challenges for overseas-based airlines, which may cause the following issues:

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<sup>3</sup> The policy advice for this approach is contained in the briefing Implementation of Pre-departure Testing for Arrivals to New Zealand (DPMC-2020/21-408 refers).

<sup>4</sup> The Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru; New Caledonia; Niue; Palau; Samoa; Solomon Islands; Tokelau; Tonga; Tuvalu; Vanuatu; and Willis and Futuna.

- a. the timing requirements for testing in the Air Border Order are based on the concept of a passenger journey and does not easily adapt to the context of aircrew;
  - b. BARNZ expressed concerns about the practicality of ensuring aircrew meet PDT requirements, given the complexity of aircrew journeys spanning multiple time zones;
  - c. this may cause airlines to choose to cancel flights to New Zealand if they consider the compliance burden to be too high;<sup>5</sup>
  - d. that cancelling of flights could result in New Zealanders being stranded overseas, with no viable option to fly home; and
  - e. cancelling flights could have an impact on New Zealand's cargo services, which could have an adverse economic impact.
21. Further, since officials last briefed you on this matter, Hon Michael Wood, Minister of Transport, has received a letter from Mr Conrad Clifford, Regional Vice President, Asia Pacific for the International Air Transport Association (IATA). The letter noted:
- a. IATA's view is that PDT for overseas-based aircrew should be avoided because of the challenges it will create for airlines; and
  - b. that airlines are already following a number of requirements for aircrew required by government and airlines themselves.
22. It is also worth noting that Emirates announced the suspension of the majority of its flights to Australia on 18 January 2021, following the introduction of cap reductions and other changes. Operational reasons were cited by the airline for this suspension.

**Public health experts are confident that a similar level of COVID-19 protection can be achieved without PDT for overseas-based aircrew**

23. Officials worked with BARNZ to examine the protocols that various airlines flying to New Zealand have in place. Most airlines have comprehensive processes in place to prevent aircrew getting COVID-19. These include personal protective equipment (PPE) on board, dedicated toilets for aircrew in some cases, aircrew lanes in airports, aircrew transport arrangements and isolation requirements, and at least one airline has a GPS tracking bracelet requirement for staff. Further information on the requirements that overseas-based airlines impose on their aircrew is provided in Appendix 2.
24. Officials have also consulted public health experts to assess whether alternatives to 72-hour PDT provide an acceptable level of COVID-19 risk reduction.
25. Officials' view is that we can achieve a similar level of protection to PDT for overseas-based aircrew through a combination of:
- a. the existing suite of measures imposed on airlines including the requirement for all overseas-based aircrew entering New Zealand to stay in a MIF (in particular the day 0/1 testing), and regular testing for MIF workers; and

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<sup>5</sup> Most flights to New Zealand are multi-leg and not direct which makes adhering to pre-departure testing requirements difficult.

- b. the new addition of seven-day testing for all overseas-based aircrew arriving in New Zealand to provide an added layer of protection.
26. Public health advice is that this combination of measures provides a good level of assurance that no cases of COVID-19 are crossing our border via overseas-based aircrew. This approach ensures that public health requirements are balanced with operational and administrative viability.

### **Industry stakeholders are confident that overseas-based aircrew will be able to comply with seven-day surveillance testing in addition to the existing measures**

27. Based on advice from BARNZ, officials consider that airlines will not stop flying to New Zealand if overseas-based aircrew are subject to a regular seven-day testing requirement.
28. The condition to provide evidence of a negative COVID-19 test no more than seven days prior to arrival in New Zealand is consistent with existing requirements for New Zealand-based aircrew, managed isolation and quarantine workers and other border workers, and requirements imposed by overseas-based airlines.

### **Details of the proposed exemption**

29. Officials recommend you grant a further class exemption (provided in Appendix 1) from the 72-hour PDT requirement for overseas-based aircrew, with the condition that all overseas-based aircrew provide evidence of a negative COVID-19 test no more than seven days before they arrive in New Zealand.

### **Enforcement of the seven-day requirement**

30. The proposed regular seven-day testing would be a clear requirement for border staff to check. Individuals who breach the seven-day testing condition may incur an infringement offence fee or a fine.<sup>6</sup> You have previously announced that a two-week grace period (that is, until 8 February 2021) will be applied for all arrivals into New Zealand, that is, infringement notices will not be issued, although the legal requirements are in force.<sup>7</sup>
31. The exemption regime does not give us direct powers to penalise employers for an employee's non-compliance or for failure to provide testing for employees. However, in practice, commercial incentives on airlines are highly likely to ensure adherence as airlines will be reluctant for their employees to be the source of COVID-19 infection in another country. In practice, airlines are unlikely to allow their employees to travel if they do not have appropriate evidence of a negative COVID-19 test result. As with a range of other existing border measures, we will rely on the Ministry of Transport's strong relationships with key stakeholders to ensure that appropriate guidance is issued to airlines and to promote compliance.

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<sup>6</sup> Not exceeding \$1000.

<sup>7</sup> Press release (19 January 2021): <https://www.beehive.govt.nz/release/pre-departure-testing-extended-all-passengers-new-zealand>.

## **Statutory power to grant an exemption**

32. You may exempt any person or class of persons from the requirement to comply with any provision of the Air Border Order if you are satisfied that:
- a. the exemption is necessary and desirable in order to promote the purposes of the COVID-19 Public Health Response Act 2020 (the COVID-19 Act) or Air Border Order; and
  - b. the extent of the exemption is not broader than is reasonably necessary to address the matters giving rise to the exemption.
33. 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.
34. 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. allows social, economic and other factors to be taken into account where it is relevant to do so; and
  - d. is economically sustainable and allows for recovery of Managed Isolation and Quarantine Facilities (MIQF) costs; and
  - e. has enforceable measures, in addition to the relevant voluntary measures and public health and other guidance that also supports that response.

## **Alignment with the purpose of the Act: preventing the spread of COVID-19**

35. The risk of spreading COVID-19 to the community is evaluated taking into account whether:
- a. the group seeking an exemption is at a lower risk of having been exposed to COVID-19;
  - b. there are appropriate measures in place to reduce the risk of the spread of COVID-19 to the New Zealand community; and
  - c. any conditions or mitigation measures are likely to be complied with and the associated risk if conditions are not complied with.
36. I consider this exemption is unlikely to create a significant risk of spreading COVID-19 to the New Zealand community. Overseas-based aircrew arriving in New Zealand are required to enter a MIQF until they depart New Zealand, where they will be subject to the day 0/1 testing regime for COVID-19 as determined appropriate.
37. Appendix 1 includes an Exemption Notice for you to sign should you wish to grant this exemption.



## Alignment with other purposes under the Act

38. Other purposes under the Act may also be relevant when you are considering an exemption request, including the economic impact of the exemption. In particular, section 4(ca) allows social, economic, and other factors to be taken into account where it is relevant to do so. This includes the impact on New Zealand of the loss of flights carrying passengers or cargo to New Zealand.
39. Note that you have previously granted an exemption to the Air Border Order for Tasman Cargo pilots returning to New Zealand from flight simulator training in Australia on the basis of them providing an important public service, transporting perishable and general cargo both ways across the Tasman [HR 20202043 refers].

## Other factors to be taken into consideration

40. The exemption discretion must be exercised consistently with the New Zealand Bill of Rights Act 1990 (NZBORA).
41. s 9(2)(h)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
42. The discretion to grant exemptions should be viewed in light of the restrictions imposed on other arrivals to New Zealand under the Air Border 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 pre-departure testing restrictions on others appear arbitrary and not proportionate to the public health risk.

## Next steps

43. If you sign the attached Exemption Notice, it will come into force on the same day with a grace period for infringements until 8 February 2021 to allow airlines to operationalise the requirement.
44. If signed, the Ministry will arrange for the Exemption Notice to be published online and in the New Zealand Gazette.

ENDS.

## Appendix 1: Exemption Notice

### Gazette notice

#### Exemption of persons from clause 8(2B) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020

1. Pursuant to clause 26 of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 ("Order"), I, Hon Chris Hipkins, Minister for COVID-19 Response, having taken into account the advice of the Director-General of Health, hereby declare that the following persons who satisfy the following criteria are exempt from clause 8(2B) of the Order (being the pre-departure testing requirements):
  - i. persons who are arriving in New Zealand as aircrew members (whom clause 8(2B) would ordinarily apply to under the Order); but
  - ii. who are not specified air crew members exempt under clause 20A(1) of the Order (being aircrew members who are not ordinarily resident in New Zealand);
2. An aircrew member is defined in the Order, meaning any person who:
  - i. is identified as a crew member on the crew manifest for the aircraft on which they arrive in New Zealand; or
  - ii. is not identified as a crew member on that manifest but is on the aircraft at the direction of an airline for which they work as a pilot, co-pilot, or flight attendant;
3. This exemption is subject to the following conditions:
  - i. persons subject to this exemption must have either:
    - a. a negative result from a COVID-19 test (as defined in clause 8(5) of the Order and as specified by the Director-General of Health) administered no more than 7 days immediately before arrival in New Zealand; or
    - b. a certificate that verifies that the person subject to this exemption was examined by a specified person no more than 7 days immediately before arrival in New Zealand and that person –
      - I. was determined to have particular physical or other needs that made it inappropriate for the person to undergo a COVID-19 test; and
      - II. did not exhibit symptoms of COVID-19; or
    - c. in the case of a positive result from a COVID-19 test administered no more than 7 days immediately before arrival in New Zealand, a certificate that verifies that a specified person considers that the person subject to this exemption is no longer infectious; and
  - ii. persons subject to this exemption must produce appropriate evidence (as specified by the Director-General of Health) of the result of that COVID-19 test or certificate if requested by 1 or more of the following:
    - a. a health protection officer;
    - b. an immigration officer;

- c. an enforcement officer;
- 4. The exemption will begin at 11.59pm 29 January 2021 until revoked or COVID-19 Act is no longer in force;
- 5. This exemption does not limit the application of any other provision in any order made under section 11 of the COVID-19 Public Health Response Act 2020.

Dated at Wellington this 29th day of January 2021



Hon Chris Hipkins  
Minister for COVID-19 Response

## Appendix 2: Overseas-based airline requirements for aircrew

### Protocols in place by airlines to detect and manage the spread of COVID-19

- Based on managed isolation data received on 14 January 2021 by Ministry of Transport officials, airlines which currently have aircrew entering New Zealand (all are required to enter a MIF for the duration of their stay) are Cathay Pacific, China Southern, Air Canada, China Airlines, Emirates, Korean Airways, Latam Airways, Malaysian Airlines, China Eastern, Qatar and Singapore Airlines.
- All overseas-based airlines have processes in place to detect COVID-19 in aircrew.
- The Ministry of Transport has been able to confirm that of the overseas-based aircrew that fly to New Zealand, the following are subject to similar requirements to New Zealand-based aircrew when they are flying. This means that the risk of overseas-based aircrew transmitting COVID-19 during a flight is also being managed by their country of residence.
- Table 1 below provides an overview of the current pre-departure testing requirements in place by these airlines.

**Table 1: Existing requirements in place by airlines**

Overseas-based airline flying to NZ	Country of Residence Requirements for aircrew
Qatar	<ul style="list-style-type: none"><li>• All crew are tested in Doha prior to departure. They are then tested again in Brisbane on arrival from Doha. As there is a crew change in Brisbane this crew is also tested prior to flying to New Zealand on the turnaround service. On arrival in New Zealand, aircrew are temperature checked and questioned.</li></ul>
Emirates	<ul style="list-style-type: none"><li>• All crew must get a PCR test 24 hours prior to departure from Dubai.</li></ul>
Singapore Airlines	<ul style="list-style-type: none"><li>• Singapore's current process provides for crew to be tested after they operate a flight on arrival back to Singapore, and to self-isolate until they return a negative COVID-19 test result.</li><li>• Officials understand there may also be additional requirements for crew depending on where they have travelled to and are seeking more information on this.</li></ul>
China Southern	<ul style="list-style-type: none"><li>• All crew are required to take nucleic acid tests after each international flight and are isolated in dedicated MIFs.</li><li>• Crew are being vaccinated progressively.</li></ul>

Cathay Pacific	<ul style="list-style-type: none"> <li>Local-based crew who have not visited high-risk places during the 21 days prior to arrival in Hong Kong must take a SARS-CoV-2 nucleic acid test at "test and go" upon arrival at Hong Kong International Airport (HKIA).</li> <li>Non-local crew who have visited high-risk places have additional requirements (e.g. isolation).</li> <li>Point-to-point transportation must be arranged by airlines between the HKIA/holding location and their accommodation. Use of public transport including Mass Transit Railway (MTR), airport shuttle train and taxi for crew transfer is prohibited.</li> <li>Aircrew are required to wear masks during the entire journey to and from HKIA.</li> <li>All crew who have visited the United Kingdom or South Africa during the 21 days prior to arrival in Hong Kong are subject to isolation at a designated hotel for 21 days upon arrival.</li> </ul>
China Eastern	<ul style="list-style-type: none"> <li>Two tests are in place and a 14-day quarantine on completion of each international flight.</li> <li>Vaccination of crew is underway.</li> </ul>

### Comparative analysis on treatment of international aircrew

- All countries introducing PDT requirements (that officials are aware of) are exempting international aircrew (see Table 2 below). This approach appears to recognise the desire to minimise further disruptions for airlines, the protocols put in place by airlines, and the desire to maintain international connectivity. If officials require international crew to undertake PDT, host countries of airlines may then seek PDT from New Zealand-based aircrew, which is likely to put further strain on Air New Zealand's networks and staff.

**Table 2: Comparative analysis on pre-departure testing requirements for international crew**

Country	Requirement for international aircrew
Canada	No PDT required. Exemption in place for aircrew members or a person who seeks to enter Canada only to become an aircrew member.
Australia	No PDT required. International aircrew continue to be subject to state and territory surveillance testing requirements, which may include a test on arrival or every 7 days in Australia.
United Kingdom	No PDT required.
United States of America	No PDT required provided they follow Federal Aviation Administration industry standard protocols for COVID-19 prevention.