

Briefing

COVID-19 Public Health Response (Required Testing) Amendment Order 2021: Final Order for Signature

Date due to MO: 13 April 2021

Action required by: 14 April 2021

Security level: IN CONFIDENCE

Health Report number: 20210488

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

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:

☐ Approved

☐ Decline

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by events

☐ See Minister's Notes

☐ Withdrawn

Comment:

COVID-19 Public Health Response (Required Testing) Amendment Order 2021: Final Order for Signature

Security level: IN CONFIDENCE **Date:** 13 April 2021

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

Purpose of report

1. This report provides you with a summary of decisions on the implementation of the COVID-19 Public Health Response (Required Testing) Amendment Order 2021 and a final Order for your signature.

Summary

2. The COVID-19 Public Health Response (Required Testing) Order 2020 will be amended to implement your decisions to extend mandatory testing to new groups of workers, to change testing frequencies for some workers, to allow the Director-General of Health to authorise different sampling methods for the purpose of compliance with the Order, to clarify that the time between tests must not exceed the length of the relevant testing cycle, and to require the use of the Border Workforce Testing Register (the Register) for relevant Persons Conducting a Business or Undertaking (PCBUs).
3. This paper provides you with a final version of the Amendment Order for your signature.
4. If you sign the Order on Thursday 15 April 2021, it will be gazetted and most of the amendments will come into force at 11:59 pm on Wednesday 21 April 2021, with the exception of the mandatory use of the Register which will come into force on Tuesday 27 April 2021.

Recommendations

We recommend you:

- a) **Note** advice from the Director-General of Health on the prerequisites for making an Order under the COVID-19 Public Health Response Act 2020, including: **Yes/No**
 - the risks of an outbreak or spread of COVID-19
 - the nature and extent of measures that are appropriate to address those risks.

- b) **Note** that as Director-General of Health, I advise that it is necessary for the groups of border workers set out in recommendation (c) to be tested routinely for COVID-19, to protect New Zealand from further spread or outbreak of COVID-19 **Yes/No**
- c) **Note** that the COVID-19 Public Health Response (Required Testing) Amendment Order 2021 will: **Yes/No**
- extend mandatory testing to workers who handle affected items (where an affected item is something that has been removed for cleaning, disposal, and/or re-use) within 72 hours of their removal from a managed quarantine facility, and who have contact with other affected workers in managed isolation and quarantine facilities while both are working, every 14 days
 - extend mandatory testing to workers who handle affected items (where an affected item is something that has been removed for cleaning, disposal, and/or re-use) within 72 hours of their removal from a managed isolation facility, and who have contact with other affected workers in managed isolation and quarantine facilities while both are working, every 14 days
 - extend mandatory testing to workers who handle affected items (where an affected item is something that has been removed for cleaning, disposal, and/or re-use) within 24 hours of their removal from an aircraft that has arrived from a location outside New Zealand, and who have contact with other affected workers in airports or aircrew while both are working, every 14 days
 - extend mandatory testing to workers who handle affected items (where an affected item is something that has been removed for cleaning, disposal, and/or re-use) within 72 hours of their removal from an affected ship, and who have contact with other affected workers in ports, every 14 days
 - extend mandatory testing to baggage handlers who handle the baggage from affected aircraft, every 14 days
 - extend mandatory testing to workers at accommodation services where New Zealand-based international air crew travelling from higher-risk routes are self-isolating, every 14 days
 - extend mandatory testing to health practitioners at accommodation services where New Zealand-based international air crew returning from designated higher-risk routes are self-isolating, every seven days
 - extend mandatory testing to all landside workers who interact with New Zealand-based international air crew travelling from higher-risk routes, every 14 days

- extend mandatory testing to workers who spend any time in an enclosed space on board an aircraft that arrived from overseas, every 14 days
- increase the frequency of mandatory testing of health practitioners at managed isolation facilities to every seven days
- increase the frequency of mandatory testing of airside health practitioners at affected airports to every seven days
- increase the frequency of mandatory testing of persons who transport crew to or from an affected ship to every seven days
- allow the Director-General of Health to authorise different saliva sampling methods for the purpose of compliance with the Order
- clarify testing cycle requirements to reflect that the time between tests must not exceed the length of the relevant testing cycle
- require the relevant Persons Conducting a Business or Undertaking to use the Register provided by the Ministry of Health to keep the required records of testing for staff subject to mandatory testing

- d) **Sign** the attached COVID-19 Public Health Response (Required Testing) Amendment Order 2021 **Yes/No**
- e) **Note** that if the Amendment Order is signed on Thursday 15 April 2021 it will be gazetted and most of the amendments will come into force at 11:59 pm on Wednesday 21 April 2021, with the exception of the mandatory use of the Register which will come into force on Tuesday 27 April 2021. **Yes/No**



Dr Ashley Bloomfield
Director-General of Health
 Date:

Hon Chris Hipkins
Minister for COVID-19 Response
 Date:

COVID-19 Public Health Response (Required Testing) Amendment Order 2021: Final Order for Signature

Background

1. The COVID-19 Public Health Response (Required Testing) Order 2020 (the Order) has been in place since 29 August 2020. The purpose of the Order is to prevent, and limit the risk of, the outbreak or spread of COVID-19, by ensuring specified border workers at risk of exposure to COVID-19 are tested on a regular basis.
2. On 22 February 2021 you agreed to a single Amendment Order to proceed with changes to testing frequencies for some workers [HR20210339 refers], expand testing to new groups of workers, allow the Director-General of Health to authorise different sampling methods for the purpose of compliance with the Order, and clarify requirements to reflect that the time between tests must not exceed the length of the relevant testing cycle [HR20210284 refers].
3. On 3 March 2021 we provided you with an updated Amendment Order to reflect your decision to include workers who handle objects that have recently been handled by international arrivals [HR20210479 refers]. Following feedback received during Ministerial consultation, officials have further refined the groups of workers who handle objects recently handled by international arrivals.
4. Earlier this year you indicated that you wished to progress making use of the Register mandatory for relevant PCBUs through the COVID-19 Public Health Response Act Amendment Bill (No 2) [HR20210348 refers]. A revised opinion from Crown Law advised that in light of the changes made to the Privacy Act 2020 late last year, a section 11 Order can be used to require use of the Register, rather than the Amendment Bill [HR20210622 refers]. Accordingly, mandatory use of the Register has now been included in the Amendment Order.
5. On 12 April 2021 you indicated that the mandatory use of the Register should come into force shortly after the other amendments, to allow relevant PCBUs further time to be onboarded and make necessary changes to their systems.
6. The attached COVID-19 Public Health Response (Required Testing) Amendment Order 2021 (the Amendment Order) at Appendix 1 reflects the changes outlined above.
7. This paper provides you with a final version of the Amendment Order for your signature.

Making an order under the COVID-19 Public Health Response Act 2020

8. Under the COVID-19 Public Health Response Act 2020 (COVID-19 Act), an order may be made or amended 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.
- 9. There is currently an Epidemic Notice in place that allows orders to be made under section 11 of the COVID-19 Act.
- 10. As the Minister for COVID-19 Response, you may make orders under section 11 of the COVID-19 Act. In order to make an order under section 11 you must have received advice from the Director-General about:
 - a. the risks of the outbreak or spread of COVID-19
 - b. the nature and extent of measures that are appropriate to address those risks.
- 11. You must 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 you must have consulted with the Prime Minister and the Minister of Justice as required under the Act. You must be satisfied that this order is appropriate to achieve the purpose of that Act.
- 12. You must be satisfied that the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (BORA).
- 13. My advice about the risks of the outbreak or spread of COVID-19 and the nature and extent of measures that are appropriate to address those risks has been set out in previous advice to you on this Amendment Order [HR20210739 refers].

Changes included in the Amendment Order

- 14. The COVID-19 Public Health Response (Required Testing) Order 2020 will be amended to extend mandatory testing to new groups of workers, to change testing frequencies for some workers, to allow the Director-General of Health to authorise different sampling methods for the purpose of compliance with the Order, to clarify that the time between tests must not exceed the length of the relevant testing cycle and to require the use of the Border Workforce Testing Register (the Register) for relevant Persons Conducting a Business or Undertaking (PCBUs).

Groups of workers required to undergo testing and testing frequency changes

Additional groups of workers

- 15. The attached Amendment Order extends mandatory testing for the following new groups of workers:
 - a. workers who handle affected items within 72 hours of their removal from managed quarantine facilities, and who have contact with other affected workers in managed isolation and quarantine facilities while both are working, every 14 days
 - b. workers who handle affected items within 72 hours of their removal from managed isolation facilities, and who have contact with other affected workers in managed isolation and quarantine facilities while both are working, every 14 days
 - c. workers who handle affected items within 24 hours of their removal from affected aircraft, and who have contact with other affected workers in airports or aircrew while both are working, every 14 days

- d. workers who handle affected items within 72 hours of their removal from affected ships and who have contact with other affected workers in ports while both are working, every 14 days
- e. baggage handlers who handle the baggage from affected aircraft, every 14 days
- f. workers at accommodation services where New Zealand-based international air crew travelling from higher-risk routes who are self-isolating, every 14 days
- g. health practitioners at accommodation services where New Zealand-based international air crew returning from designated higher-risk routes are self-isolating, every seven days
- h. all landside workers who interact with New Zealand-based international air crew travelling from higher-risk routes, every 14 days
- i. workers who spend any time in an enclosed space on board an aircraft that arrived from overseas, every 14 days.

Changes to testing frequencies for some workers

- 16. The attached Amendment Order changes the testing frequency from fortnightly to weekly for the following groups of workers:
 - a. health practitioners at managed isolation facilities
 - b. airside health practitioners at affected airports
 - c. persons who transport crew to or from an affected ship.

Clarifying testing cycle requirements to reflect that the time between tests must not exceed the length of the relevant testing cycle

- 17. The attached Amendment Order specifies that, when reoccurring testing is required, the interval of days from one test to the next test that an affected worker is required to undergo may not exceed the length of the testing period that applies to them.

Allowing the Director-General of Health to authorise different sampling methods for the purpose of compliance with the Order

- 18. The attached Amendment Order allows the Director-General to issue a notice to specify the method by which saliva samples may be collected and authorise this method for the purpose of compliance with the Order.

Requiring the use of the Register

- 19. The attached Amendment Order requires relevant PCBU's to keep records of testing and medical examinations for their staff within a register maintained and monitored by or on behalf of the Ministry.
- 20. The Register is a tool created and made available by the Ministry, free of charge, to support PCBU's to meet their obligations under the Order. The Register allows PCBU's to keep a list of their border workers, the testing cycle that applies to each, the date of their last test and details of any exemption from the testing requirements a worker may have been granted. This enables PCBU's to tell how many workers are due for their next test

and whether any are overdue. The Register can also notify workers when their next test is due.

Feedback from consultation

21. Further to consultation undertaken throughout the development of the Amendment Order, final agency and Ministerial consultation was completed in April 2021.

Workers who have contact with other affected workers

22. Feedback from the Ministry of Transport reiterated their concern that the group of workers who handle affected items within 24 hours of their removal from affected aircraft and who, while working have contact with other affected workers under the Order may capture wider groups such as dry-cleaners beyond the intention of the Order. The Ministry of Transport suggest that the group could be more narrowly defined by referencing those who *routinely* have contact with other affected workers.
23. The Ministry of Health's view was that adding 'routinely' would create drafting issues as the Schedule is not structured in a way that could reflect cumulative risk. Amendments have been made so that contact which is fleeting is not captured, and there is greater certainty.
24. To respond to this concern, a definition of "have contact with" has been created to be specific about what kinds of interactions will trigger a testing requirement:
- having face-to-face contact within 2 metres of another affected worker for 15 minutes or more; or
 - being within an enclosed space within 2 metres of another affected worker for 15 minutes or more.
25. Additional minor amendments have been made to clarify that both workers need to be working to trigger a testing requirement. We expect that this will limit the number of workers who may inadvertently be captured by the Order (e.g. dry-cleaners receiving aircrew uniforms).

Communicating the mandatory register use changes to PCBU's

26. Your office conveyed feedback received from Ministerial consultation that further information was needed on how the mandatory use of the Register would be communicated to affected PCBU's, to ensure they are able to understand and comply with their obligations.
27. The Ministry will continue to work with other agencies to support communication with their sector stakeholders. The communications package to support the changes to the Order includes:
- targeted key messages, including posters, for the general public, PCBU's, the health sector, workers and unions
 - two notices tailored to different audiences regarding the changes to the Order and making the Register mandatory (the second of which will be distributed this week)
 - reminder information that will be sent to the above groups a fortnight and 3 days ahead of Register use becoming mandatory on Tuesday 27 April

- a training and onboarding video.
28. As outlined in earlier advice, for some PCBUs mandatory use of the Register will be a new requirement and will require significant work for them to operationalise this [HR20210739 refers]. This requirement will come into force on 27 April 2021, providing a shorter timeframe for lead in than was requested by the Transport sector. Health officials will continue to work with PCBUs to assist them to use the Register and work through any interface issues with their existing processes.
29. As highlighted above, a training and onboarding video has been prepared for PCBUs. Officials will encourage PCBUs to watch the step by step training video. If PCBUs still require further assistance, a direct training session can be arranged with the team at the Ministry responsible for maintaining and monitoring use of the Register.

Minor drafting changes

30. A minor change has been made to clause 11(2)(c) to add the words “and monitored” to ensure clarity regarding the Ministry’s ability to proactively monitor use of the Register. The relevant sub part of the clause will read:
- “(2) The record must—*
- (a) be entered on a register specified by, and maintained **and monitored** by or on behalf of, the Ministry of Health;”*
31. An additional change has been made to clarify that workers who handle objects in specific settings (ports, airports, MIQFs) are only required to be tested if they interact with other workers covered by the Order who work in the same settings (e.g. port workers interacting with port workers, airport workers interacting with airport workers/air crew, MIQF workers interacting with MIQF workers).
32. A further minor change made is to specify that only baggage handlers who handle baggage are covered (not all workers who happen to handle baggage).

Equity

33. The impacts of COVID-19 are felt differentially across New Zealand communities. Māori and Pacific communities and those living with disabilities, in lower socio-economic groups and crowded or institutional settings bear a greater portion of both health and economic impacts and risks. The mandatory border worker testing regime has been a key part of the response to prevent the outbreak or spread of COVID-19 to the community, particularly those communities with many workers in border settings.
34. As part of the policy process, the Ministry engaged with agencies who were able to conduct limited engagement with border stakeholders on our behalf to ensure issues, risks and concerns were captured and can be addressed through implementation arrangements. No equity concerns were raised as part of this process.

Next steps

35. If you sign the amended Order on Thursday 15 April 2021, it will be gazetted and most of the amendments will come into force at 11:59 pm on Wednesday 21 April 2021, with the exception of the mandatory use of the Register which will come into force on Tuesday 27 April 2021.

36. Under section 17 of the COVID-19 Public Health Response Act 2020 (the Act), a section 11 Order is a disallowable instrument for the purposes of the Legislation Act 2021 and must be presented to the House of Representatives as soon as practicable. Furthermore, under section 16 of the Act, Parliament must pass a resolution to approve the Order within 10 sitting days (or 60 days in total, whichever is the longer). If no such resolution is passed, the Order will be automatically revoked.

ENDS.

PROACTIVELY RELEASED

**Appendix 1: Final COVID-19 Public Health Response (Required Testing)
Amendment Order 2021**

PROACTIVELY RELEASED

COVID-19 Public Health Response (Required Testing) Amendment Order 2021

This order is made by the Minister for COVID-19 Response under sections 11 and 15(1) of the COVID-19 Public Health Response Act 2020 in accordance with section 9 of that Act.

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Order

1 Title

This order is the COVID-19 Public Health Response (Required Testing) Amendment Order 2021.

2 Commencement

- (1) Clause 7 comes into force on 27 April 2021.
- (2) The rest of this order comes into force at 11.59 pm on 21 April 2021.

3 Principal order

This order amends the COVID-19 Public Health Response (Required Testing) Order 2020 (the **principal order**).

4 Clause 4 amended (Interpretation)

In clause 4, insert in their appropriate alphabetical order:

affected item means—

- (a) an item (apart from cargo or freight) removed for cleaning, disposal, or re-use from an affected ship or a passenger area of an aircraft;
- (b) an item removed for cleaning, disposal, or re-use from a managed quarantine facility or a managed isolation facility

crew has the same meaning as in clause 4 of the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020

have contact with, in relation to persons who belong to different groups, means—

- (a) having face-to-face contact within 2 metres of each other for 15 minutes or more; or
- (b) being in a confined space within 2 metres of each other for 15 minutes or more

relevant aircrew member means a person—

- (a) who is in isolation following a flight on which the person arrived in New Zealand; and
- (b) who was—
 - (i) on the crew manifest for the flight; or
 - (ii) on the flight at the direction of an airline for which the person carries out work as a pilot, co-pilot, or flight attendant

5 Clause 7 amended (Affected person must undergo testing and medical examination)

After clause 7(2), insert:

- (3) Where an affected person must undergo recurring testing, the interval of days from one test to the next test may not exceed the length of the testing period that applies to the affected person.

Example

If the applicable testing period is every 7 days, and a person becomes an affected person on 22 April, the affected person's first test must be no later than 29 April. If recurring testing is required, and the affected person was first tested on 23 April, the second test may not be later than 30 April. If the second test was on 28 April, the third test may not be later than 5 May.

6 Clause 9 amended (Scope of testing and medical examination)

- (1) Replace clause 9(a) with:

- (a) must involve any of (or a combination of any of) the following:

- (i) taking nose swabs:
- (ii) taking mouth swabs:
- (iii) taking saliva; and

- (2) In clause 9, insert as subclause (2):
- (2) In this clause, **taking saliva** means the method or methods by which saliva may be taken and analysed, including any conditions, that the Director-General has approved in a notice published—
 - (a) on a publicly accessible Internet site maintained by or on behalf of the New Zealand Government; and
 - (b) in the *Gazette*.

7 Clause 11 amended (Duty of relevant PCBU to keep record of testing and medical examination)

- (1) Replace clause 11(2)(a) with:
 - (a) be entered on a register kept, maintained, and monitored by, or on behalf of, the Ministry of Health; and
- (2) In clause 11(2)(b), replace “made” with “be made”.

8 Schedule 2 amended

- (1) In Schedule 2, item 1.1, second column, replace “facility” with “facilities”.
- (2) In Schedule 2, item 2.1, second column, replace “facility” with “facilities”.
- (3) In Schedule 2, after item 2.2, insert:

2.3	Health practitioners working at managed isolation facilities	Community testing centre, testing centre at isolation facility, or other healthcare facility	Once every 7 days starting on 22 April 2021
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- (4) In Schedule 2, item 3.5, replace “handling” with “who handle”.
- (5) In Schedule 2, after item 3.10, insert:

3.11	Baggage handlers who work at affected airports and who handle baggage from affected aircraft	Community testing centre, testing centre at affected airport, or other healthcare facility	Once every 14 days starting on 22 April 2021
3.12	Persons (other than excluded airport persons) who spend no more than 15 minutes in enclosed space on board affected aircraft	Community testing centre, testing centre at affected airport, or other healthcare facility	Once every 14 days starting on 22 April 2021
3.13	Health practitioners carrying out work airside	Community testing centre, testing centre at affected airport, or other healthcare facility	Once every 7 days starting on 22 April 2021
3.14	All landside workers who interact with relevant aircrew members	Community testing centre, testing centre at affected	Once every 14 days starting on 22 April 2021

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	airport, or other healthcare facility	
(6)	In Schedule 2, items 4.1 to 4.5, replace “ship” with “ships”.	
(7)	In Schedule 2, item 4.5, replace “persons” with “persons (other than crew)”.	
(8)	In Schedule 2, after item 4.6, insert:	
4.7	Workers who transport crew to or from affected ships	Community testing centre, testing centre at affected port, or other healthcare facility Once every 7 days starting on 22 April 2021
(9)	In Schedule 2, heading to Part 5, replace “ <i>Aircrew members</i> ” with “ <i>Groups in relation to aircrew members</i> ”.	
(10)	In Schedule 2, item 5.1, replace “airport” with “affected airport”.	
(11)	In Schedule 2, after item 5.1, insert:	
5.2	Health practitioners working at accommodation services (other than private dwellinghouses) where relevant aircrew members are self-isolating	Community testing centre, testing centre at affected airport, or other healthcare facility Once every 7 days starting on 22 April 2021
5.3	Workers at accommodation services (other than private dwellinghouses) where relevant aircrew members are self-isolating	Community testing centre, testing centre at affected airport, or other healthcare facility Once every 14 days starting on 22 April 2021
<i>Part 6: Groups in relation to affected items</i>		
6.1	Workers who handle affected items within 72 hours of their removal from managed quarantine facilities and who have contact with members of groups specified in Part 1 or 2 while both are working	Community testing centre, testing centre at quarantine facility, or other healthcare facility Once every 14 days starting on 22 April 2021
6.2	Workers who handle affected items within 72 hours of their removal from managed isolation facilities and who have contact with members of groups specified in Part 1 or 2 while both are working	Community testing centre, testing centre at isolation facility, or other healthcare facility Once every 14 days starting on 22 April 2021
6.3	Workers who handle affected items within 24 hours of their removal from affected aircraft and who have contact with members of groups specified in Part 3 or 5 while both are working	Community testing centre, testing centre at affected airport, or other healthcare facility Once every 14 days starting on 22 April 2021
6.4	Workers who handle affected items within 72	Community testing centre, testing centre at affected Once every 14 days starting on 22 April 2021

hours of their removal from affected ships and who have contact with members of groups specified in Part 4 while both are working	port, or other healthcare facility
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Dated at this day of April 2021.

Minister for COVID-19 Response.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order amends the COVID-19 Public Health Response (Required Testing) Order 2020. Clause 7 comes into force on 27 April 2021 and the rest of this order comes into force at 11.59 pm on 21 April 2021. The amendments—

- clarify the intervals at which an affected person must be tested:
- enable the taking of saliva for the purposes of testing and medical examination:
- require PCBU's to enter their records of testing and medical examination on a register kept, maintained, and monitored by, or on behalf of, the Ministry of Health:
- adjust the groups of affected persons to be tested and increase the frequency of testing for certain groups.

A failure to comply is an infringement offence under section 26(3) of the COVID-19 Public Health Response Act 2020 (the **Act**) for which a person is liable to an infringement fee of \$300 or a fine not exceeding \$1,000.

This order must be approved by a resolution of the House of Representatives before the end of the relevant period described in section 16(2) of the Act. If that does not happen, the order is revoked at the end of that period.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This order is administered by the Ministry of Health.