

Briefing

Further Exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 to enable one-way quarantine-free travel from the Cook Islands

Date due to MO: 23 March 2021 **Action required by:** 26 March 2021

Security level: IN CONFIDENCE **Health Report number:** 20210625

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

Copy to: Hon Andrew Little, Minister of Health

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Maree Roberts	Deputy Director-General of Health, 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 Withdrawn | |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:

Further Exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 to enable one-way quarantine-free travel from the Cook Islands

Security level: IN CONFIDENCE **Date:** 23 March 2021

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

Purpose of report

1. This briefing recommends that you grant a further exemption from clauses 8(2A), (2B), (3), (3A) and (4) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 until 30 April 2021 to enable the continuation of quarantine-free travel from the Cook Islands to New Zealand.

Summary

2. On 13 January 2021, you approved an exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (the Air Border Order) to enable quarantine-free travel from the Cook Islands to New Zealand.
3. The exemption means that passengers travelling from the Cook Islands do not have to undertake 14 days of managed isolation when they arrive in New Zealand.
4. Since the Air Border Order needed to be amended and this process was unlikely to be completed by the time the first quarantine-free flights from the Cook Islands were due to arrive in New Zealand, the exemption was initially granted until 31 March 2021.
5. The required changes to the Air Border Order have been more complex to draft than first anticipated. This is due to the number of quarantine-free travel arrangements that have been or are in the process of being concluded with different jurisdictions, the need to ensure the amendments enable appropriate border and public health measures to be adopted to respond to an outbreak of COVID-19 within these jurisdictions, and the extra-territorial nature of some of these measures.
6. The Ministry considers that the best approach is to issue a further exemption until 30 April 2021 rather than immediately amending the Order, as this will ensure the required amendments to the Air Border Order are comprehensively drafted and avoid unintended consequences. The Parliamentary Counsel Office have indicated that the required changes will be drafted by this date, which will enable the Cook Islands to be designated as a QFT place under the amendment Order.

Recommendations

We recommend you:

- a) **Note** that under the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 you may exempt any person or class of persons from the requirement to comply with any provision of the Order. **Yes/No**
- b) **Note** that when deciding whether to grant an exemption you must consider the advice of the Director-General of Health and what, if any, conditions to impose an exemption. **Yes/No**
- c) **Note** that to enable quarantine-free air travel to continue from the Cook Islands an exemption needs to be granted that exempts passengers from having to undertake 14 days of managed isolation when they arrive in New Zealand. **Yes/No**
- d) **Note** that I consider there is a low risk that granting this exemption will contribute to the outbreak or spread of COVID-19 in New Zealand. **Yes/No**
- e) **Note** that this exemption is required while the remaining work on the amendments to the Air Border Order is being completed. **Yes/No**
- f) **Sign** the attached Exemption Notice which grants an exemption from clauses 8(2A), (2B), (3), (3A) and (4) of the Air Border Order to passengers travelling by air from the Cook Islands to New Zealand. **Yes/No**



Dr Ashley Bloomfield

Director-General of Health

Date:



Hon Chris Hipkins

Minister for COVID-19 Response

Date: 26/3/2021

Further Exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 to enable one-way quarantine-free travel from the Cook Islands

Background

7. On 7 December 2020, Cabinet agreed to sign the *Arrangement between the Government of New Zealand and the Government of the Cook Islands to facilitate quarantine-free travel*. It noted that two-way quarantine-free travel with the Cook Islands would commence by the end of the first quarter of 2021 subject to the outcome of a review of the readiness of its health system [CAB-20-MIN-0515].
8. As an interim measure, Cabinet expressed an interest in commencing one-way quarantine-free travel from the Cook Islands to New Zealand and directed officials to undertake further work around the possibility and implications of this proposal.
9. On 13 January 2021, you approved an exemption from the Air Border Order to enable quarantine-free travel from the Cook Islands to New Zealand, and such travel began on 21 January 2021. Since quarantine-free travel from the Cook Islands commenced, more than 1,000 travellers on 12 flights have entered New Zealand without having to undertake 14 days of managed isolation upon arrival.
10. Since the Air Border Order needed to be amended and this process was unlikely to be completed by the time the first quarantine-free flights from the Cook Islands were due to arrive in New Zealand, the exemption was initially granted until 31 March 2021.
11. The required changes to the Air Border Order have been more complex than first anticipated. A further exemption is required to allow the Ministry time to complete the drafting of the required amendments to the Air Border Order.

Statutory power to grant an exemption

12. You may exempt any person or class of person 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 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.
13. 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.

Promotion of the purpose of the Act: preventing the spread of COVID-19

14. Section 4 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);
 - b. avoids, mitigates, or remedies the actual or potential adverse effects of the COVID-19 outbreak (whether direct or indirect);
 - c. allows social, economic and other factors to be taken into account where it is relevant to do so;
 - d. is economically sustainable and allows for recovery of 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.
15. The purpose of the Air Border Order is to “prevent and limit the risk of, the outbreak or spread of COVID-19 by imposing certain requirements on persons arriving in New Zealand by air (including medical examination and testing for COVID-19, and commencement of isolation or quarantining, as soon as practicable after arriving in New Zealand).”
16. The risk of spreading COVID-19 to the community is evaluated taking into account:
- a. whether the group seeking an exemption are at a lower risk of having been exposed to COVID-19;
 - b. whether there are appropriate measures in place to reduce the risk of the spread of COVID-19 to the New Zealand community; and
 - c. whether any conditions or mitigation measures are likely to be complied with and the associated risk if conditions are not complied with.
17. As set out in HR 20202277, the exemption is unlikely to create a significant risk of spreading COVID-19 to the New Zealand community as qualifying passengers:
- a. are at a low risk of contracting COVID-19
 - b. will be subject to conditions on arrival in New Zealand that will provide additional assurance.
18. There is no evidence of COVID-19 in the Cook Islands and the Cook Islands Government is committed to maintaining current health and border measures to ensure that COVID-19 does not enter the country.

Alignment with other purposes under the Act

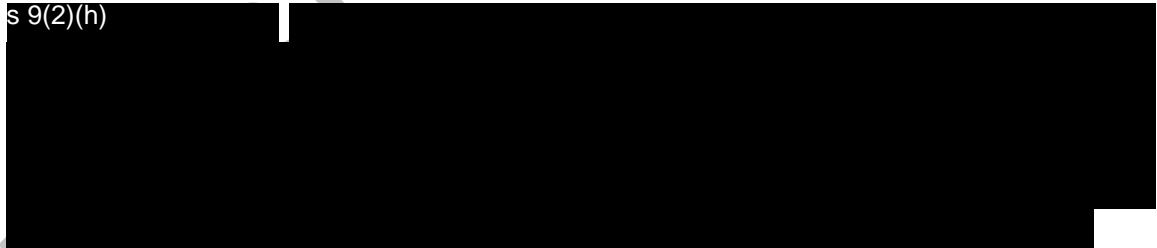
19. Other purposes under the Act may also be relevant when you are considering an exemption request. For instance, section 4(ca) allows social, economic, and other factors to be taken into account where it is relevant to do so.
20. The Cook Islands is part of the Realm of New Zealand and Cook Islanders are New Zealand citizens. The Cook Islands rely heavily on New Zealand infrastructure and resources. For example, the Cook Islands rely on New Zealand’s secondary and tertiary healthcare services (such as cancer treatment and dialysis), and the requirement to undergo 14-days quarantine is a barrier to Cook Islanders accessing these essential services.
21. Additionally, managing capacity for the managed isolation system is important to ensure that New Zealand can continue to maintain the system effectively. This system has proven critical for New Zealand’s management of COVID-19, and mitigation of the risk of its

spread into the community. However, the system is expensive and any opportunity to safely lower demand supports its economic sustainability. The exemption will continue to make spaces available in managed isolation for returning New Zealanders or other visa holders that would otherwise be taken by arrivals from the Cook Islands.

The need for a further exemption

22. The current exemption allows people travelling from the Cook Islands to enter New Zealand without having to undertake 14 days of managed isolation upon arrival. The exemption will expire on 31 March 2021, but it is desirable that passengers travelling from the Cook Islands continue to be exempt from managed isolation.
23. The Ministry is developing amendments to the Air Border Order, which will provide a longer-term solution to enable passengers arriving in New Zealand from partner countries to be exempted from quarantine requirements. These changes have been more complex to draft than first anticipated. For instance, they need to recognise that several quarantine-free arrangements have been or are in the process of being concluded with different jurisdictions, including those enabling one-way quarantine-free travel to New Zealand. In addition, they need to ensure appropriate border and public health measures can be adopted to respond to an outbreak of COVID-19 within these jurisdictions.
24. A further exemption is necessary to ensure the required amendments to the Air Border Order are carefully considered and do not lead to any unintended consequences.

Other factors to be taken into consideration

25. The exemption discretion must be exercised consistently with the New Zealand Bill of Rights Act 1990 (NZBORA).
26. The discretion to grant exemptions 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 exemption power is not exercised in line with the purpose of the Act this could have the effect of making managed isolation restrictions on others appear arbitrary and not proportionate to the public health risk.
27. s 9(2)(h) 

Next steps

28. If you sign the attached Exemption Notice, the exemption will come into effect at 11:59pm on 31 March 2021 and apply until 11:59pm on 30 April 2021. The Ministry of Health will arrange for the Exemption Notice to be published online and in the Gazette.
29. The Ministry of Health will provide you with the final version of the COVID-19 Public Health Response (Air Border) Amendment Order 2021 in the coming weeks for your signature.

ENDS.

Gazette notice

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

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 persons:
 - i. arriving in New Zealand as a passenger on an Airbus A320 or A321 aircraft operated by Air New Zealand Limited;
 - ii. who have travelled non-stop from the Cook Islands to New Zealand; and
 - iii. who satisfy the quarantine-free entry criteria as defined in clause 2;

are exempt from clause 8(2A), (2B), (3), (3A) and (4) of the Order.

2. The *quarantine-free entry criteria* are that:
 - i. the person has been in the Cook Islands and/or New Zealand for at least 14 consecutive days immediately prior to travelling to New Zealand;
 - ii. they have maintained physical distancing (to the greatest extent practicable) from any person, at the airport at which they arrive, who did not arrive from the Cook Islands;
 - iii. they have worn a face covering while in the airport at which they arrived in New Zealand; and
 - iv. on arrival into New Zealand, there are no reasonable grounds (as determined by a suitably qualified health practitioner) to suspect that the person may have COVID-19.
3. For the purpose of this exemption, **face covering** means a covering of any type that covers the nose and mouth of a person.
4. For the purpose of this exemption, **physical distancing**, from other persons, means remaining at least 2 metres away from them.
5. This exemption will commence at 11:59 on 31 March 2021 and will expire at 11.59pm on 30 April 2021.

Dated at Wellington this 26th day of March 2021.



Hon Chris Hipkins
Minister for COVID-19 Response