

Briefing

Maritime Border Order Amendments and Further Work on Maritime Border Policy Settings

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To:	Hon Chris Hipkins, Minister for COVID-19 Response		
Copy to:	Hon Michael Wood, Minister of Transport Hon Meka Whaitiri, Minister of Customs Hon Kris Faafoi, Minister of Immigration		

Contact for telephone discussion

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Minister's office to complete:

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|---|------------------------------------|--|
| <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 Withdrawn | |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:

Maritime Border Order Amendments and Further Work on Maritime Border Policy Settings

Security level: IN CONFIDENCE **Date:** 5 April 2021

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

Purpose of report

This briefing requests your agreement to a number of amendments to the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 (the MBO), and notes policy work that is underway which may require further MBO amendments.

Summary

1. The proposed amendments are part of ongoing efforts to improve COVID-19 risk management at the maritime border, while minimising any adverse impact on shipping movements.
2. The proposed changes:
 - a. Remove the default isolation and quarantine requirements for ships in New Zealand which have met (or are not required to meet) isolation and quarantine requirements where they make return trips from a New Zealand port to any New Zealand territories that sit outside the 12 mile territorial sea limit (the Kermadecs and the Auckland Islands for example), including the Ross Dependency.
 - b. Provide a power in the MBO to require the testing of off-signing maritime crew who intend to depart New Zealand by air or sea.
 - c. Shift the obligation to provide prescribed isolation or quarantine signage from a ship's master to a port company and clarify where the signage should be positioned.
3. This briefing also notes the need to consider broadening exemption powers in the MBO to allow ships and essential workers (other than crew) to arrive in New Zealand to deliver essential services once the ship arrives in New Zealand (marine cable laying for example). Further advice on what activities will be considered essential services and other matters will be provided to you later in May.

Recommendations

We recommend you:

- a) **Agree** to exempt ships which travel within New Zealand's Exclusive Economic Zone, and between this zone and the Ross Dependency, from isolation and quarantine requirements prescribed in clause 17 of the MBO, where: **Yes/No**
- i) travel occurs only within New Zealand's Exclusive Economic Zone and directly between this zone and the Ross Dependency (i.e. not via a foreign port)
 - ii) no person on the ship is otherwise bound by the isolation and quarantine requirements under any Order made under the COVID-19 Public Health Response Act 2020
 - iii) no person on the ship comes into contact with any persons who are not part of that voyage unless this contact is approved (with any conditions) in advance by the Director-General of Health
 - iv) the alert level status for the port of departure is at Alert level 1 at the time of departure of the ship.
- b) **Agree** to a power to require off-signing maritime crew to undergo a COVID-19 test prior to departing overseas by air or sea. **Yes/No**
- c) **Agree** that evidence of a COVID-19 test supplied by an off-signing crew member will meet this requirement, provided that the evidence: **Yes/No**
- i) is provided by a laboratory approved by the Ministry of Health to provide testing services, and
 - ii) shows that the crew member underwent the test within 72 hours of the scheduled departure of his or her flight.
- d) **Agree** to place responsibility for signage for a ship's isolation and quarantine status with port companies (it is currently the responsibility of ships' masters). **Yes/No**
- e) **Agree** to require signage to be placed immediately adjacent to all points of egress between the ship and shore, in a manner that can be easily seen by anyone (crew or port-based personnel) intending to use those points of egress. **Yes/No**
- f) **Note** that any amendment Orders drafted as a result of this briefing are likely to be combined in a subsequent briefing with other amendment Orders (for quarantine free travel for example). **Noted**
- g) **Note** that policy advice on exemptions for ships arriving in New Zealand to provide a service, and other matters will be provided to you in May. **Noted**



Dr Ashley Bloomfield
Director-General of Health
Date:



Hon Chris Hipkins
Minister for COVID-19 Response
Date: 7/4/21

Maritime Border Order Amendments and Further Work on Maritime Border Policy Settings

Background

Maritime border controls help give effect to New Zealand's Elimination Strategy

1. The maritime border controls discussed in this briefing fall mainly within 'Pillar 1' (Keep it out) of the COVID-19 Elimination Strategy and relate to the safe movements of ships between New Zealand territories (and the Ross Dependency), the international transfer of maritime crew and the safety of crew and port-based workers on and around isolating or quarantining ships.
2. Restrictions at the maritime border are intended to support New Zealand's COVID-19 Elimination Strategy, while recognising the need to balance this with maintaining international supply chains, movements in maritime labour and freedom of shipping movements.
3. The amendments described in this briefing are part of ongoing efforts to ensure that COVID-19 is stopped at the maritime border, without undue interruption or cost to maritime activities.

Proposed amendments to the MBO

Amendment 1: Permit ships to travel within New Zealand's Exclusive Economic Zone and to the Ross Dependency without automatically triggering isolation and quarantine requirements

4. Current provisions in the MBO have the unintended effect of triggering isolation and quarantine requirements for people on ships who traverse international waters, without travelling to other jurisdictions or interacting with foreign ships.
5. The MBO at present does not provide an explicit definition of New Zealand for the purposes of the Order. Therefore, the definition in the COVID-19 Public Health Response Act 2020 applies, which in turn relies on the definition in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977. This means the definition applied for the purposes of the MBO is limited to the islands and territories within the Realm of New Zealand (not including the Cook Islands, the Niue, Tokelau, or the Ross Dependency) and the sea around these land masses for up to twelve nautical miles.
6. Under the MBO, any ship departing from a New Zealand port to the Auckland Islands or Kermadecs for example, will travel outside the 12 mile limit into international waters and will therefore trigger the isolation and quarantine requirements in the MBO on its return

to New Zealand. This also impacts on any ship granted permission to enter New Zealand by the Director-General of Health as this exemption will lapse once the ship travels in excess of 12 nautical miles from the New Zealand coast, meaning that a new permission would be required for entry back into New Zealand.

7. There is no additional COVID-19 risk associated with these practices, where travel occurs directly from one New Zealand territory to another or in respect to a return trip the Ross Dependency, and where there is no contact with others who are not part of that voyage (from a foreign ship for example).
8. Officials therefore propose that ships which travel within New Zealand's Exclusive Economic Zone (and the Ross Dependency) be treated as not having left New Zealand for the purposes of isolation requirements, subject to the following conditions:
 - a. Travel can occur only within New Zealand's Exclusive Economic Zone and directly between this zone and the Ross Dependency (i.e. not via a foreign port)
 - b. No person on the ship is otherwise bound by the isolation and quarantine requirements prescribed by any Order under the COVID-19 Public Health Response Act 2020
 - c. No person on the ship comes into contact with any persons who are not part of that voyage unless this contact is approved (with any conditions) in advance by the Director-General of Health
 - d. The alert level status for the port of departure is Alert Level 1 at the time of departure.
9. This permission would not require an exemption under the MBO. Any involvement by the Director-General of Health would only be required where interaction with persons outside the ship was involved. Neither will it change the current diplomatic clearance processes for ships (including Antarctic Programme vessels) entering the Ross Dependency.

Amendment 2: Providing a power in the MBO to require testing of off-signing replacement crew who are isolating on a ship in a New Zealand port

10. In November 2020 you agreed that off-signing crew should be tested prior to departing New Zealand by air (and that on-signing crew be tested on arrival by air to New Zealand) [HR20201964 refers]. This amendment to the MBO will give further legal weight to that decision, which is already being followed in practice. In particular, by providing a dedicated legal mechanism to support ongoing implementation of your decision, a direction under section 70 of the Health Act 1956 to enforce this requirement (if challenged) will no longer be needed as the fall-back legal option.
11. The testing of on and off-signing crew at the airport of arrival or departure is already underway, and processes have been established in consultation with the Ministry of Health at Auckland and Christchurch airport facilities. In both cases crew are tested at the airport of arrival or departure, or in a Managed Isolation Facility if not transferring directly between airport and ship or vice versa
12. Private arrangements for "pre-departure testing" for off-signing crew are also in place which enable them to meet the boarding clearance requirements of certain airlines or

certain countries. In these cases, because a negative test result is required prior to crew being cleared to board a flight, testing by the air border testing team at Auckland or Christchurch is not practical. Testing is therefore being carried out by accredited private medical providers with the cost covered by shipping companies. This testing is occurring either on board the ship or at private medical practices with transport being provided by Managed Isolation and Quarantine (MIQ) transport operations. Ministry of Health officials are satisfied that these arrangements meet the policy intent of your decision to test all on and off-signing crew arriving or departing by air.

13. We now intend to include these powers in the relevant Border Orders to streamline the testing requirements. Adding a testing requirement for on-signing maritime crew on arrival in New Zealand will require an amendment to the COVID-19 Public Health Response (Air Border) Order (No 2) 2020, while testing prior to departure from New Zealand will require an amendment to the MBO. Amendments for requiring testing prior to departure should include sufficient flexibility to be able to meet the requirements of some airlines and jurisdictions for negative test results prior to departure.

Amendment 3: Shifting the obligation for isolation and quarantining signage from the ship's master to port companies

14. The requirement for signage relating to the isolation or quarantine status of a ship is a workplace health and safety responsibility which is best placed with port companies, rather than the ships master (which is currently the legal requirement). It is also currently unclear in the MBO where isolation or quarantine signage should be physically placed on or around the vessel.
15. At present there is a requirement under clause 24 (4A) of the MBO for a ship's master to display signage while their ship is in isolation or quarantine. Border officials suggest that this requirement is best placed with port companies as this responsibility is consistent with the key role port companies play in port security and port workplace health and safety as the main legal entity for conducting a business or undertaking under the Health and Safety at Work Act 2015.
16. Border officials have also indicated that the MBO is unclear about where the signage is to be displayed on or around the vessel.
17. We therefore propose that port companies, rather than ship masters, be required to provide signage as to the status of ships in isolation or quarantine. Further, we proposing that this signage be placed immediately adjacent to all points of egress between the ship and shore, in a manner that can easily be seen by anyone (crew or port-based personnel) intending to use those points of egress.
18. The New Zealand Customs Service and Maritime New Zealand are likely to pick up the cost of signage at this point. The signage is sufficiently generic to be re-used for successive ships. However, if the nature of the signage is changed by the Ministry of Health, and new signage was needed, these costs could fall to the port companies. It is unlikely that this would happen, and would be negotiated in advance with port companies if it did.

Areas for further policy consideration and possible MBO amendments

Broadening the scope of exemptions and general settings for permitting ships to arrive in New Zealand to conduct an essential service

19. Currently, personnel who are not responsible for navigating a ship but are generally considered to be essential for a service associated with that ship (e.g. submarine cable laying, geological survey, research) can only access New Zealand through the air border (i.e. they cannot arrive through the maritime border). This unintended consequence of the MBO can cause additional costs or delays in providing these services and adds an unnecessary burden to MIQ facilities when these people could have isolated on the ship in transit.
20. At present, the MBO prohibits all foreign flagged ships from arriving in New Zealand unless specifically exempt. The corresponding Immigration Instructions permit only those personnel to arrive on an exempt ship if they are required to bring the ship safely to New Zealand. This means that some personnel on ships delivering an essential service to New Zealand are not able to arrive on the ship because they are geologists or surveying specialists, rather than those involved in navigating the ship.
21. Officials (including Immigration New Zealand) are considering a proposal to extend exemption powers to allow the Director-General of Health to consider exemptions for ships and personnel on board involved in providing an essential service to New Zealand (that contribute to the New Zealand economy for example). This exemption would need to be aligned with relevant Immigration Instruction changes, to allow those seeking Essential Skills Work Visas to accompany the vessel they are intending to work on when it is coming to New Zealand.

New power to require isolation or quarantining of New Zealand-based workers undertaking necessary tasks on a ship

22. Persons on a ship who “undertake a necessary task” (such as maintenance) are obliged to take reasonable steps to limit the outbreak or spread of COVID-19 while undertaking their work. This includes physical distancing where practicable, wearing PPE, minimising time on the ship and getting vaccinated. However, this does not extend to taking further steps to minimise risk after coming ashore such as quarantining, isolating or getting additional tests.
23. The risk could be minimised by requiring these persons to follow any reasonable directions given by a Medical Officer of Health on steps that must be taken to manage the public health risk during and after the work is completed. Steps may include isolation for a certain period after the work is completed and undergoing additional testing.
24. These powers would only be exercised where there is an elevated public health risk associated with essential workers immediately re-entering the New Zealand community (where they were symptomatic or were close contacts of a positive case, for example).

Technical amendments

25. Officials have also identified a range of clauses in the MBO that require technical fixes. These include:

- a. clarification of the drafting of the whole of Part 3 of the MBO, which relates to requirements of persons isolating on board ships
 - b. a requirement to notify an enforcement officer where a person on an isolating ship is disembarking for reasons given in clause 20 of the MBO (e.g. for medical reasons, attending a court hearing)
 - c. adding Transport Accident Investigation personnel to the list of persons who may undertake a necessary task on an isolating or quarantining ship.
26. These amendments are part of an ongoing process of review of Orders under the COVID-19 Public Health Response Act 2020. This process is intended to ensure that Orders meet high standards of clarity and remain fit for purpose in giving legislative effect to the Government's COVID-19: Elimination strategy for Aotearoa New Zealand.

Next steps

27. If you agree to these policy changes, drafting instructions will be issued to the Parliamentary Council Office to commence drafting amendments to the MBO. Subject to your agreement, you will be provided with a further briefing in April with draft amendment Orders for consultation with relevant Ministers.
28. The Order is likely to include a range of amendments, including the technical changes referred to above and amendments related to quarantine free travel (following any policy decisions you may make in regard to this).
29. Policy proposals on the items above requiring further policy consideration (broadening exemption settings for example) will be provided in a briefing scheduled for mid May, which may require a further amendment Order.

ENDS.