

Briefing

COVID-19 Public Health Response (Maritime Border) Amendment Order 2021 for consultation

Date due to MO:	20 May 2021	Action required by:	25 May 2021
Security level:	IN CONFIDENCE	Health Report number:	20211184
To:	Hon Chris Hipkins, Minister for COVID-19 Response		
Copy to:	Hon Michael Wood, Minister of Transport Hon Meka Whaitiri, Minister of Customs		

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:

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 Withdrawn | |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

COVID-19 Public Health Response (Maritime Border) Amendment Order 2020 for consultation

Security level: IN CONFIDENCE

Date: 20 May 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 COVID-19 Public Health Response (Maritime Border) Amendment Order 2020 (the Amendment Order).

Summary

2. On 5 April 2021 you agreed to adopt a number of amendments to the COVID-19 Public Health Response (Maritime Border) Order No. 2 2020 (the Order) to support the operationalisation of the settings required to manage the public health risk of COVID-19 at the maritime border [HR20210635 refers]. The proposed amendments have considered measures to further enhance COVID-19 protection measures, whilst also supporting our maritime economy to operate with minimal disruption.
3. The attached draft Amendment Order would give effect to those changes including:
 - a. providing a legal mandate for requiring testing of off-signing maritime replacement crew that are departing via the Air Border [HR20201964 refers];
 - b. permitting travel on a limited basis between New Zealand's exclusive economic zone without triggering isolation and quarantine requirements upon arriving back in New Zealand;
 - c. new requirements for port companies to ensure that effective signage is utilised on ships that are occupying isolation and quarantine berths;
 - d. other minor and technical amendments.


Recommendations

We recommend you:

- a) **Note** the attached draft COVID-19 Public Health Response (Maritime Border Order) Amendment Order 2020 gives effect to the policy previously agreed in HR20201816. **Noted**
- b) **Note** that advice from the Director-General of Health is that the COVID-19 Public Health Response (Maritime Border Order) Amendment Order 2020 is **Noted**

in line with the purposes of the COVID-19 Public Health Response Act 2020, to prevent, and limit the risk of, the outbreak or spread of COVID-19 by refining the existing border restrictions to further mitigate risk.

- c) **Agree** to consult with the Prime Minister and Minister of Justice on the attached draft COVID-19 Public Health Response (Maritime Border) Amendment Order 2021. ☒ **Yes** ☐ **No**



Dr Ashley Bloomfield
Director-General of Health
Date:



Hon Chris Hipkins
Minister for COVID-19 Response
Date: 20/5/2021

PROACTIVELY RELEASED

COVID-19 Public Health Response (Maritime Border) Amendment Order 2020 for consultation

Background

4. The COVID-19 Public Health Response (Maritime Border) Order 2020 (the Order) came into force at 11.59pm on 30 June 2020. The Order restricts which ships may arrive in New Zealand and puts in place isolation and quarantine requirements for people arriving in New Zealand by sea.
5. The COVID-19 Public Health Response (Maritime Border) Amendment Order 2020 (the Amendment Order) as drafted would amend the Order to give effect to previously agreed policy decisions (HR 20210635 and HR 20201964 refers) including:
 - a. giving effect to your previous decision [HR2020194] to provide a legal mandate for testing off-signing maritime replacement crew who are departing via the Air Border without issuing a section 70 notice under the Health Act 1956;
 - b. permitting travel on a limited basis between New Zealand's exclusive economic zone without triggering isolation and quarantine requirements upon arriving back in New Zealand;
 - c. new requirements for port companies to ensure that effective signage is utilised on ships that are occupying isolation and quarantine berths;
 - d. other minor and technical amendments.

Contents of the draft Amendment Order

Testing off-signing replacement maritime crew departing by air

6. On 19 November 2020 you agreed that all maritime replacement crew be tested for COVID-19 at the airport or managed isolation facility (MIF) prior to departing New Zealand by air.
7. The testing of replacement maritime crew departing by air has been occurring on a voluntarily basis. This amendment to the MBO will provide a legal mandate for this decision, which is already being followed in practice. This will result in directions under section 70 of the Health Act 1956 to enforce this requirement no longer being needed as the fall-back legal option.

Permitting ships to travel within New Zealand's Exclusive Economic Zone

8. Current provisions in the MBO have the unintended consequence of triggering isolation and quarantine requirements for people on ships traversing international waters, without travelling to other jurisdictions or interacting with foreign ships.
9. For example, under the Order, any ship departing from a New Zealand port to the Auckland Islands or Kermadecs will entail travel outside New Zealand's EEZ into

international waters and will therefore trigger the 14-day isolation and quarantine requirements in the Order on return.

10. Public health officials advise there is no additional COVID-19 risk associated with these practises where travel occurs directly from one New Zealand territory to another.

Signage Requirement for ships in isolation or quarantine

11. At present there is a requirement under clause 24 (4A) of the Order for a ship's master to display signage while their ship is in isolation or quarantine. Border officials confirm that this requirement is best placed with port companies rather than the ship's master. This change would be 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.
12. The Amendment Order as drafted includes a new requirement for port companies to display clear and visible signage on ships that are in isolation or quarantine and provides clarity on the signage requirements.

Process for amending a section 11 Order

13. Under the COVID-19 Public Health Response Act 2020 (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);
 - c. it has been authorised by the Prime Minister.
14. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the COVID-19 Act.
15. As the Minister for COVID-19 Response, you may make Orders under section 11 of the COVID-19 Act.
16. To make an Order under section 11 of the Act 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;
 - 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)
 - c. consult with the Prime Minister, the Minister of Justice and any other Ministers you think necessary
 - d. be satisfied that this Order is appropriate to achieve the purposes of the Act.
17. 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

18. You are receiving ongoing advice about the risks associated with COVID-19. In accordance with section 9(2) of the Act, you may have regard to that advice without it being repeated here.
19. You have previously been provided with detailed public health rationale for the proposed amendments [HR 20210635 refers].
20. 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 the risk of any spread.

New Zealand Bill of Rights Act 1990 (NZBORA)

21. A matter for you to consider each time an Order is proposed or amended 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.
22. A number of rights are engaged by the proposed amendments including:
 - a. the right to freedom under section 18;
 - b. the right to be secure against unreasonable search or seizure under section 21
23. It is considered that insofar as the rights noted above are engaged and limited by the amendments, any limitations are justifiable and reasonable in a free and democratic society noting that the amendments are risk-based, and impositions on individuals' rights are directly proportionate to the level of risk of COVID-19 transmission associated with their entry into New Zealand.

Implementation

24. Officials have worked closely with the New Zealand Customs Service, Maritime New Zealand, the Ministry of Transport, the Ministry of Business Innovation and Employment, the Ministry for Primary Industries and other stakeholders to develop the proposed amendments and will continue to work to ensure changes are implemented promptly.

Next steps

25. Following Ministerial consultation, officials will finalise the Amendment Order, and provide you with a version for signing on 27 May 2021.
26. The Amendment Order will come into effect 48 hours after signing on 29 May 2021.

ENDS.

IN CONFIDENCE

COVID-19 Public Health Response (Maritime Border) Order (No 2) Amendment Order (No 2) 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 (Maritime Border) Order (No 2) Amendment Order (No 2) 2021.

2 Commencement

This order comes into force at 11.59 pm on 00 May 2021.

3 Principal order

This order amends the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020.

4 Clause 4 amended (Interpretation)

- (1) In clause 4, definition of **isolation or quarantine**, paragraph (b), replace “outside the ship” with “who did not arrive in New Zealand on the ship”.
- (2) In clause 4, replace the definition of **last contact** with:

last contact—

- (a) means the most recent physical contact between a person who arrives in New Zealand on board a ship (**person A**) and any other person not on board the ship when it arrives in New Zealand (**person B**); and
 - (b) includes person A’s most recent physical contact with person B—
 - (i) during a change to the ship’s crew; or
 - (ii) at an offshore location; but
 - (c) excludes—
 - (i) physical contact between person A and person B during a change to the ship’s crew, if person B is a new crew member coming on board the ship and has completed the period of isolation or quarantine required by New Zealand law as in force at the time person A arrives in New Zealand; and
 - (ii) physical contact that person A has with person B while person B is a person who undertakes a necessary task
- (3) In clause 4, insert as subclause (2):
 - (2) For the purposes of the definition of last contact in subclause (1), person A is treated as having physical contact with person B once person B boards the ship while person A is on board, whether or not they have actual physical contact on board.

5 Clause 12 amended (Matters relevant to Director-General giving permission under clause 11)

In clause 12(2), replace “clause 11(1)(b)” with “clause 11(1)(c)”.

6 Clause 15 amended (Form and content of notice of arrival)

Replace clause 15(2)(b)(v) with:

- (v) any person who boarded the ship after it departed from that port or other place, whether or not they are on board when the ship arrives in NZ.

7 Clause 17 amended (General requirement to remain in isolation or quarantine)

- (1) In clause 17(1)(b), replace “clause 19(2)” with “this order”.
- (2) In clause 17(2), after “until”, insert “a medical officer of health or health protection officer verifies that”.
- (3) In clause 17(2), replace “indictors” with “indicators”.
- (4) After clause 17(4), insert:
 - (4A) However, subclause (1) does not apply to a person who arrives in New Zealand on board a ship that, since it last departed from a port or place in New Zealand, travelled only within New Zealand’s exclusive economic zone, if—
 - (a) no person on board the ship is otherwise required by a COVID-19 order to be isolated or quarantined on their arrival in New Zealand; and
 - (b) no person on board the ship came into contact with any person who was not part of the voyage, unless the contact was approved in advance (with or without conditions) by the Director-General; and
 - (c) the alert level status for the port or place of the ship’s last departure from a port or place in New Zealand, at the time of departure, was alert level 1.

8 Clause 19 amended (Arrivals must meet low-risk indicators to end period of isolation or quarantine)

- (1) Replace the heading to clause 19 with “**Requirements for disembarking**”.
- (2) Replace clause 19(1) with:
 - (1) A person who arrives in New Zealand on board a ship ends their period of isolation or quarantine only if a medical officer of health or a health protection officer is satisfied that—
 - (a) the person has met the requirements of clause 17(1); and
 - (b) no person on board the ship has, in the previous 14 days, experienced any symptoms that suggest the presence of COVID-19.
 - (1A) The person need not disembark in order to end their period of isolation or quarantine.

9 New clause 22A inserted (Testing of crew leaving ship to depart New Zealand by air)

After clause 22, insert:

22A Testing of crew leaving ship to depart New Zealand by air

- (1) A crew member leaving their ship to depart from New Zealand by air must, before departing from New Zealand by air, comply with subclause (2).

- (2) The crew member meets the requirement in subclause (1) by providing a medical officer of health or health protection officer with evidence that—
- (a) the crew member was tested for COVID-19 in the manner described in clause 22(3); and
 - (b) the test was sent to a laboratory approved by the Director-General to provide testing services; and
 - (c) the crew member underwent the test no earlier than 72 hours before the scheduled departure of their flight.

10 Clause 23 amended (Transfer to place of isolation or quarantine and start time)

In clause 23(2)(a)(ii), delete “for the purpose of clause 17(2)(b)”.

11 Clause 24 amended (Ships in isolation or quarantine)

Replace clause 24(4A) and (4B) with:

- (4A) The relevant port company must ensure that prescribed isolation and quarantine signage is visible and secure—
- (a) immediately adjacent to every point of egress between the ship and shore; and
 - (b) in a manner that can be seen easily by anyone intending to use any of those points of egress.
- (4B) However, an enforcement officer may exempt the port company from the requirement specified in subclause (4A).

12 Clause 25 amended (Obligations of persons undertaking necessary tasks)

In clause 25(1)(b), replace “extend” with “extent”.

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 (Maritime Border) Order (No 2) 2020 (the **principal order**).

This order comes into force at [11.59 pm on 00 May 2021].

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 COVID-19 Public Health Response Act 2020. If that does not happen, the order is revoked at the end of that period.

Clause 4 amends definitions in clause 4 of the principal order as follows:

- to clarify in the definition of isolation or quarantine that a person on board a ship must maintain physical distancing from any person who did not arrive on the ship;
- to clarify that last contact refers to the most recent physical contact that a person who arrives on a ship had with a person who did not arrive on the ship.

Clauses 5, 10, and 12 contain minor corrections.

Clause 6 amends clause 15 of the principal notice to align the information required for a notice of arrival with the new definition of last contact.

Clause 7 amends clause 17 of the principal order to provide that the general obligation to remain in isolation or quarantine does not apply to a person who arrives in New Zealand on board a ship after travelling only within New Zealand's exclusive economic zone.

Clause 8 amends clause 19 of the principal order to clarify that a person on board a ship who completes the prescribed isolation or quarantine requirements is not required to disembark.

Clause 9 inserts a new clause 22A, which relates to the testing of crew who are leaving New Zealand by air. The crew must provide a medical officer of health or health protection officer with evidence that they have been tested for COVID-19, the test was sent to an approved laboratory, and they underwent the test within 72 hours of their scheduled departure.

Clause 11 amends clause 24 of the principal order as follows:

- by transferring the obligation to provide prescribed isolation or quarantine signage from the ship's master to the relevant port company;
- by ensuring that the signage is placed immediately adjacent to the points of egress between the ship and the shore.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*:
This order is administered by the Ministry of Health.