

Briefing

Draft COVID-19 Public Health Response (Required Testing) Amendment Order 2021 for Ministerial Consultation Including Further Workers

Date due to MO:	3 March 2021	Action required by:	3 March 2021
Security level:	IN CONFIDENCE	Health Report number:	20210479
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:

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 Withdrawn | |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

Draft COVID-19 Public Health Response (Required Testing) Amendment Order 2021 for Ministerial Consultation Including Further Workers

Security level: IN CONFIDENCE **Date:** 3 March 2021

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

Purpose of report

1. This report provides you with a draft of the COVID-19 Public Health Response (Required Testing) Amendment Order 2021 for Ministerial consultation. This version incorporates your request that the draft Amendment Order include groups of workers who handle objects recently handled by international arrivals [HR20210345 refers].

Summary

2. On 2 March 2021 we provided you with advice on the implementation of the COVID-19 Public Health Response (Required Testing) Amendment Order 2021 and a draft Order for Ministerial consultation [HR20210345 refers]. This draft Amendment Order did not include workers who handle objects that have been recently handled by international arrivals.
3. On 3 March 2021 you indicated that you wish to progress the option of including this group of workers in the Order.
4. The attached draft Order reflects the changes we advised you of in HR20210345, as well as including four specific groups of workers who handle objects recently handled by international arrivals.
5. We are working towards having a final Order ready for you to sign on Thursday 11 March 2021, that could come into force at 11:59 pm on Monday 15 March 2021.

Recommendations

We recommend you:

- a) **Note** that 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 appropriate to address those risks

- b) **Note** that, as the Director-General of Health, I have provided advice on the necessity for the groups of border workers set out in recommendation (d) to be tested routinely for COVID-19, to protect New Zealand from further spread or outbreak of COVID-19 [H20210345 refers] **Yes/No**
- c) **Note** that the Amendment Order, at your request, includes four specific groups of workers who handle objects that have been recently handled by international arrivals in the Order **Yes/No**
- d) **Consult** with the Prime Minister, Minister of Finance, Minister of Justice, Minister of Health, Minister of Customs, and the Minister of Transport on the COVID-19 Public Health Response (Required Testing) Amendment Order 2021, which:
- extends mandatory testing to workers who handle affected objects removed from an enclosed space on board an aircraft that has arrived from a location outside New Zealand, where the handling occurs within 24 hours of the aircraft arriving in New Zealand, and where an affected object is an item that has been removed for cleaning, disposal, and/or re-use, every 14 days **Yes/No**
 - extends mandatory testing to workers who handle affected objects that have been used within a managed isolation or quarantine facility, if that handling occurs within 72 hours of the items being removed from the facility, where an affected object is an item that has been removed for cleaning, disposal and/or re-use, every 14 days **Yes/No**
 - extends mandatory testing to workers who handle affected objects that have been used on an affected ship, if that handling occurs within 72 hours of the items being removed from the affected ship, where an affected object is an item that has been removed for cleaning, disposal and/or re-use, every 14 days **Yes/No**
 - extends mandatory testing to workers who handle the baggage of internationally arriving or internationally transiting passengers or other persons on board an affected aircraft, every 14 days **Yes/No**
 - extends mandatory testing to workers at accommodation services where New Zealand-based international air crew travelling from higher-risk routes who are self-isolating, every 14 days **Yes/No**
 - extends 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 **Yes/No**
 - extends mandatory testing to all landside workers who interact with New Zealand-based international air crew travelling from higher-risk routes, every 14 days **Yes/No**
 - extends mandatory testing to workers who spend any time in an enclosed space on board an aircraft that arrived from overseas, every 14 days **Yes/No**
 - increases the frequency of mandatory testing of health practitioners at managed isolation facilities to every seven days **Yes/No**

- increases the frequency of mandatory testing of airside health practitioners at affected airports to every seven days **Yes/No**
 - increases the frequency of mandatory testing of persons who transport crew to or from an affected ship to every seven days **Yes/No**
 - allows the Director-General of Health to authorise different saliva sampling methods for the purpose of compliance with the Order **Yes/No**
 - clarifies testing cycle requirements to reflect that the time between tests must not exceed the length of the relevant testing cycle **Yes/No**
- e) **Note** that following the outcome of Ministerial consultation, we will provide you with a signing copy of the Order on Wednesday 10 March 2021 **Yes/No**
- f) **Note** that if you sign the COVID-19 Public Health Response (Required Testing) Amendment Order 2021 on Thursday 11 March 2021, it can come into force at 11:59 pm on Monday 15 March 2021 **Yes/No**



Dr Ashley Bloomfield
Director-General of Health
Date: 3 March 2021

Hon Chris Hipkins
Minister for COVID-19 Response
Date:

Draft COVID-19 Public Health Response (Required Testing) Amendment Order 2021 for Ministerial Consultation Including Further Workers

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 18 February 2021, you agreed that the Order should be amended to expand testing to additional groups of workers, to allow the Director-General of Health to authorise different sampling methods for the purpose of compliance with the Order, and to clarify testing cycle requirements to reflect that workers should be tested as close to the end of their cycle as possible [HR20210284 refers].
3. We provided you with further advice on testing frequency of affected workers on 19 February 2021 [HR20210339 refers]. On 22 February 2021 you agreed to a single Amendment Order process for both sets of changes to the Order.
4. On 2 March 2021 we provided you with advice on the implementation of the COVID-19 Public Health Response (Required Testing) Amendment Order 2021 and a draft Order for Ministerial consultation [HR20210345 refers]. This draft Amendment Order did not include workers who handle objects that have been recently handled by international arrivals.
5. On 3 March 2021 you indicated that you would like to receive an updated Order that includes workers who come into contact with objects handled by international arrivals [HR20210345 refers].
6. This report provides you with an updated draft Amendment Order to reflect your decision that the draft Order should include workers who handle objects that have been recently handled by international arrivals.

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

7. 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.

8. There is currently an Epidemic Notice in place that allows orders to be made under section 11 of the COVID-19 Act.
9. As the Minister for COVID-19 Response, you may make orders under section 11 of the COVID-19 Act.
10. 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, and
 - 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. The Order must be consistent with the New Zealand Bill of Rights Act 1990.
12. 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 is set out below.

Including workers who handle specific objects in the Order

13. In response to your feedback, the attached draft Amendment Order includes four specific groups of workers who handle objects that have been recently handled by international arrivals. We have been able to narrow down this group by being specific about the objects they handle that would bring them into a potentially higher category of risk.
14. In the draft Amendment Order, the draft groups of workers included are:
 - a. workers who handle affected objects, where the handling occurs within 24 hours of the aircraft arriving in New Zealand, and where an affected object is an item that has been removed for cleaning, disposal, and/or re-use removed from an enclosed space on board an aircraft that has arrived from a location outside New Zealand
 - b. workers who handle affected objects that have been used within a managed isolation or quarantine facility, if that handling occurs within 72 hours of the items being removed from the facility
 - c. workers who handle affected objects that have been used on an affected ship, if that handling occurs within 72 hours of the items being removed from the affected ship, where an affected object is an item that has been removed for cleaning, disposal and/or re-use
 - d. workers who handle the baggage of internationally arriving or internationally transiting passengers or other persons on board an affected aircraft.
15. In all of the above definitions, 'affected objects' are items that have been removed for cleaning, disposal, and/or re-use.
16. The above definitions are intended to capture workers who receive items such as laundry, food trays, and cutlery used by international arrivals that are removed for cleaning, disposal or re-use, as well as passenger and crew baggage. It would apply to workers who handle these items off-site. For example, this definition would capture

workers who launder blankets used on aircraft and workers who clean crew uniforms, regardless of whether the worker is located in an airport precinct.

17. Although there is a risk that these items come into contact with workers elsewhere in the chain (for example, delivery drivers who move the items from an affected airport to the off-site laundry facility), the approach is intended to capture workers who are in more prolonged contact with these items. We have narrowed the definition of this group to best reflect known activities that, if we cannot rule out the possibility of fomite transmission, are most likely to carry a risk of exposure.
18. The transport sector in particular remains concerned about the proposal to extend mandatory testing to workers who handle objects that have been recently handled by international arrivals. Specific concerns raised include the potential for the scope to be wider than anticipated resulting in large numbers of workers needing to be tested, as well as questioning the strength of the public health rationale for testing this group. These concerns can be partly mitigated through good guidance and communications.

New Zealand Bill of Rights Act 1990 considerations – legally privileged

19. The COVID-19 Public Health Response Act 2020 (the Act) requires the Minister to be satisfied that the order does not limit or is a justified limit on rights and freedoms under the New Zealand Bill of Rights Act 1990 (BORA). An Order that is inconsistent with BORA is unlawful.

s 9(2)(h)

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s 9(2)(h)

s 9(2)(g)(i), s 9(2)(h)

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Equity

29. 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.
30. Any changes to the mandatory testing requirements need to be preceded by engagement with Māori, Pacific and wider groups mandating and supporting workers covered by the Order and unions to ensure issues, risks and concerns are captured and addressed through implementation arrangements.

Timing of the amendment Order

31. Officials are working to the timing set out below, with the Amendment Order expected to come into force at 11:59 pm on Monday, 15 March 2021.

Step	Date
HR signed and Ministerial consultation begins	Wednesday, 3 March 2021
Ministerial consultation ends	5pm, Monday 8 March 2021

Feedback from consultation given to Ministry of Health	9am, Tuesday 9 March 2021 (or earlier if possible)
HR and signing copy of the Order submitted	5pm, Wednesday 10 March 2021
Order signed	Thursday 11 March
Commencement	11:59pm, Monday 15 March

Next steps

32. We recommend that you commence Ministerial consultation on the attached draft Amendment Order.
33. We recommend that you:
 - a. consult the Prime Minister, Minister of Finance, Minister of Justice, Minister of Health, Minister of Customs, and the Minister of Transport on the attached draft Order
 - b. forward a copy of this report to the Prime Minister, Minister of Finance, Minister of Justice, Minister of Health, Minister of Customs, and Minister of Transport
 - c. return the signed report to the Ministry of Health.
34. Following the outcome of Ministerial consultation, we will provide you with a signing copy of the Order on Wednesday 10 March 2021.
35. If you sign the amended Order by Thursday 11 March 2021, it will be gazetted and published. We are planning for the amended Order to come into force at 11:59 pm on Monday 15 March 2021.

ENDS.

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

PROACTIVELY RELEASED

IN CONFIDENCE

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

This order comes into force at 11.59 pm on 15 March 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 aircraft means an aircraft that arrives from a location outside New Zealand

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 affected 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

relevant aircrew member has the same meaning as **relevant crew member** in clause 15B(3) of the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020

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

After clause 7(2), insert:

- (3) Where recurring testing is required, the interval of days from one test to the next test that an affected person must undergo 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 10 March, the affected person's first test must be no later than 17 March. If recurring testing is required, and the affected person was first tested on 15 March, the second test may not be later than 22 March. If the second test was on 19 March, the third test may not be later than 26 March.

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):

- (3) In this clause, **taking saliva**, in relation to 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 Schedule 2 amended

- (1) In Schedule 2, item 1.1, second column, replace “facility” with “facilities”.

(2) In Schedule 2, after item 1.2, insert:

1.3	Workers who handle affected items within 72 hours of their removal from managed quarantine facilities	Community testing centre, testing centre at quarantine facility, or other healthcare facility	Once every 14 days starting on 16 March 2021
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(3) In Schedule 2, item 2.1, second column, replace “facility” with “facilities”.

(4) In Schedule 2, after item 2.2, insert:

2.3	Workers who handle affected items within 72 hours of their removal from managed isolation facilities	Community testing centre, testing centre at isolation facility, or other healthcare facility	Once every 14 days starting on 16 March 2021
2.4	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 16 March 2021

(5) In Schedule 2, item 3.1, replace “aircraft that arrives from location outside New Zealand” with “affected aircraft”.

(6) In Schedule 2, after item 3.10, insert:

3.11	Workers who handle affected items within 24 hours of their removal from affected aircraft	Community testing centre, testing centre at affected airport, or other healthcare facility	Once every 14 days starting on 16 March 2021
3.12	Workers who handle baggage of persons who are or were on board affected aircraft	Community testing centre, testing centre at affected airport, or other healthcare facility	Once every 14 days starting on 16 March 2021
3.13	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 16 March 2021
3.14	Health practitioners carrying out work airside	Community testing centre, testing centre at affected airport, or other healthcare facility	Once every 7 days starting on 16 March 2021

(7) In Schedule 2, items 4.1 to 4.5, replace “ship” with “ships”.

(8) In Schedule 2, item 4.5, replace “persons” with “persons (other than crew)”.

(9) 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 16 March 2021
4.8	Workers who handle affected items within 72 hours of their removal from affected ships	Community testing centre, testing centre at affected port, or other healthcare facility	Once every 14 days starting on 16 March 2021

(10) In Schedule 2, item 5.1, replace “airport” with “affected airport”.

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

Explanatory note

(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 16 March 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 16 March 2021
5.4	All landside workers who interact with relevant aircrew members	Community testing centre, testing centre at affected airport, or other healthcare facility	Once every 14 days starting on 16 March 2021

Dated at this day of March 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, which comes into force at 11.59 pm on 15 March 2021, amends the COVID-19 Public Health Response (Required Testing) Order 2020 to—

- clarify the intervals at which an affected person must be tested:
- permit the taking of saliva by a specified method for the purposes of testing and medical examination:
- 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.