

Briefing

COVID-19 Public Health Response (COVID-19 Vaccination Certificates) Order 2021 – Ministerial consultation

Date due to MO: 19 November 2021 **Action required by:** 22 November 2021

Security level: IN CONFIDENCE **Health Report number:** 20212391

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

Contact for telephone discussion

Name	Position	Telephone
Steve Waldegrave	Group Manager, COVID-19 Policy	s 9(2)(a)
Laura Miller	Manager, COVID-19 Policy Response	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☐ Withdrawn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 (COVID-19 Vaccination Certificates) Order 2021 – Ministerial consultation

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

1. This report recommends that you consult with the Prime Minister and the Ministers of Justice and Health, any other Ministers that you think fit, on the attached draft COVID-19 Public Health Response (COVID-19 Vaccination Certificate) Order 2021 (the Order).

Summary

2. In October 2021, Cabinet agreed to a range of measures in relation to vaccine mandates and the COVID-19 Vaccination Certificate (CVC). The attached draft Order gives effect to those decisions by setting out the:
 - a. eligibility criteria for a CVC
 - b. eligibility criteria and process for applying for a vaccination exemption
 - c. process for applying for a CVC
 - d. how a CVC must be issued.
3. The proposed Order is in line with the purposes of the COVID-19 Public Health Response Act 2020.
4. The Order is dependent on proposed provisions contained in the COVID-19 Response (Vaccinations) Legislation Bill, which is due to be introduced to the House the week of 22 November 2021. If those provisions are enacted, and once you have consulted with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary, a final Order will be prepared for your signature.
5. It is anticipated that Order will come into effect at 11:59pm on Tuesday 30 November 2021.

Recommendations

We recommend you:

- a) **Note** that on 11 and 18 October 2021, Cabinet agreed to a range of provisions to enable eligible persons to obtain and use COVID-19 vaccination certificates [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer]. **Noted**
- b) **Note** that the attached draft COVID-19 Public Health Response (Vaccination Certificate) Order 2021 (the Order) would give effect to those decisions. **Noted**
- c) **Note** that officials advise that the attached draft Order is 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. **Noted**
- d) **Note** that Order is dependent on Parliament enacting proposed changes relating to COVID-19 vaccination certificates in the COVID-19 Response (Vaccinations) Legislation Bill. **Noted**
- e) **Agree** to consult on the attached draft Order, which gives effect to the policy decisions agreed by Cabinet [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer]. **Yes/No**



Steve Waldegrave

Group Manager, COVID-19 Policy

System Strategy and Policy

Date: 19/11/2021



Hon Chris Hipkins

Minister for COVID-19 Response

Date: 24/11/2021

Why limit ability to apply for a CVC to 7 days after full vaccination?
I understand that immunity increases in the days following doses, but given the potential limitations people will face if they don't have a CVC, is this 'standdown' period really necessary? CH

COVID-19 Public Health Response (COVID-19 Vaccination Certificates) Order 2021 – Ministerial consultation

Background

1. In October 2021, Cabinet agreed settings for obtaining and using COVID-19 Vaccination Certificates (CVCs) as part of a revised COVID-19 Protection Framework [CAB-21-MIN-0413 and CAB-21-MIN-0422 refer]. The attached draft COVID-19 Public Health Response (COVID-19 Vaccination Certificate) Order 2021 (the Order) would give effect to those decisions by setting out the:
 - a. eligibility criteria for a CVC
 - b. eligibility criteria and process for applying for a vaccination exemption
 - c. process for applying for a CVC
 - d. how a CVC must be issued.

Contents of the Order

Eligibility to apply for a CVC

2. A person will be eligible for a CVC if they:
 - a. have been vaccinated at least 7 days prior to the date of their application, or
 - b. have a COVID-19 vaccination exemption.

Director-General of Health may grant a COVID-19 vaccination exemption

3. The Director-General of Health (Director-General) may grant a COVID-19 vaccination exemption for a period of up to six months to a person to who satisfies the vaccination exemption criteria. The exemption criteria will be published in the *Gazette*.
4. The application process for a COVID-19 vaccination exemption will be the same as that for certain affected workers applying for an exemption under the COVID-19 Public Health Response (Vaccinations) Order 2021.
5. An application must be made on behalf of the person by a medical practitioner or nurse practitioner who must certify that they have reasonable grounds for believing that the person meets the specified exemption criteria.

How to apply for a CVC

6. The Order sets out the application process for eligible persons to apply to the Director-General for a CVC. This process includes a description of the required information that must be provided, such as the person's full name and address, National Health Identification number, and type of vaccine they have received.

Issuing a CVC

7. The Director-General must issue a CVC to an eligible person who makes an application.
8. The CVC may be issued in any form that the Director-General decides, may contain any information other than personal information, and may contain any code or any symbol that the Director-General decides.

Anti-fraud provision – to come

9. An anti-fraud provision will be included in the final version of the CVC Order for your signature.

Process for making a section 11 Order

10. Under the COVID-19 Public Health Response Act 2020 (the Act), an order may be made if either:
 - a. an epidemic notice is in force (under the Epidemic Preparedness Act 2006,
 - b. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2002), or
 - c. it has been authorised by the Prime Minister.
11. There is currently an epidemic notice in place, which allows orders to be made under section 11 of the Act.
12. As the Minister for COVID-19 Response, you may make orders under section 11 of the Act.
13. To make or amend an order under section 11 you must:
 - a. have received advice from the Director-General of Health about:
 - i. the risks of the outbreak or spread of COVID-19
 - ii. the nature and extent of measures that are appropriate to address those risks
 - b. be satisfied that the proposed Amendment Order does not limit or is a justified limit on the rights and freedoms as specified in NZBORA
 - c. consult with the Prime Minister, the Minister of Justice, Minister of Health, and any other Ministers you think necessary, and
 - d. be satisfied that the order is appropriate to achieve the purposes of the Act.
14. Public health 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 was previously provided [HR20212018 refers] and is also set out below.

Public health rationale

15. The public health benefit of using CVCs in high-risk events and venues depends on the level of vaccination coverage, if an outbreak is occurring, and the number of COVID-19 cases. CVCs could mitigate the risk of COVID-19 outbreaks in some settings and protect vulnerable populations by reducing the risk of COVID-19 spread.
16. Secondary benefits could be to incentivise vaccination and provide reassurance to event organisers that their event is unlikely to be cancelled if there is an escalation of Alert

Levels. It is unclear to what extent the use of CVCs drives higher vaccination rates as this depends on the scope of the requirement and social license in relation to the need for vaccination.

New Zealand Bill of Rights Act 1990

17. You have been previously advised of New Zealand Bill of Rights Act implications in relation to CVCs and vaccine requirements for entry to certain places. Such requirements impose a restriction on freedom of movement and potentially freedom of religion for individuals who consider their religious beliefs prevent them from being vaccinated.
18. However, health advice previously provided to Cabinet shows that CVCs can be a justified limit on that right to limit the potentially very serious health impacts of COVID-19 in the community due to the increased risk presented by unvaccinated people. The limit is no more than necessary given that those without a CVC will still be able to access life-preserving services like supermarkets. The potential for discrimination against those who medically cannot be vaccinated is alleviated ensuring that both those who are vaccinated and those who medically cannot be can obtain the same kind of CVC.

Equity

19. It is preferable that all eligible people in New Zealand would have sufficient opportunity to be vaccinated before a CVC requirement is introduced, to avoid inequitable prevention of access to events to those who have not had the opportunity to be vaccinated due to the staged eligibility of the roll out. Given the progress of the vaccination programme to date, there has been a sufficiently reasonable time from when the eligibility of vaccines was broadened to when the measures proposed in this paper would be implemented [CAB-21-MIN-0421 refers].
20. While there has been a considerable lift in vaccinations for Māori, there is significant concern over the remaining number of vaccinations needed in the 12-40 year old age groups to achieve equity. The recently established \$120 million fund to accelerate Māori vaccination rates and support communities to prepare for the implementation of the new COVID-19 Protection Framework will seek to address this.

Next steps

21. The Order is reliant on provisions contained within the COVID-19 Response (Vaccinations) Legislation Bill being enacted. This is expected to occur in the week of 22 November 2021. Once the relevant provisions in the Bill are enacted, and following completion of Ministerial consultation, officials will work with the Parliamentary Counsel Office and provide you with a final Order for signing by Friday 26 November 2021 at the latest.
22. Officials recommend that you sign the final Order no later than the midday on Friday 26 November 2021, so that it can be published in the *New Zealand Gazette* that day. This will allow officials to meet the statutory obligation to provide at least 48 hours' notice between gazetting and the Order coming into effect.
23. Once signed the Order will come into effect at 11:59pm on Tuesday 30 November 2021.

ENDS.

The Order is publicly available at:
www.legislation.govt.nz/regulation/public/2021/0382/latest/LMS607026.html