

Health Report

COVID-19 Alert Level 1 Amendment Order

Date due to MO: 5 October 2020

Action required by: 5 October 2020

Security level: IN CONFIDENCE

Health Report number: 20201800

To: Hon Chris Hipkins, Minister of Health

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)

Action for Private Secretaries

Return the signed report to the Ministry of Health.

Date dispatched to MO:

COVID-19 Alert Level 1 Amendment Order

Purpose of report

The COVID-19 Public Health Response (Alert Level Requirements) Amendment Order (No 3) 2020 (attached) applies Alert Level 1 requirements to all of New Zealand, repealing the Alert Level 2 provisions that applied to Auckland.

Summary

- On Monday 5 October 2020, Cabinet agreed the Auckland region should move to Alert Level 1 from 11:59 pm on Wednesday 7 October 2020.
- An order giving effect to these changes is attached for your signature.
- The draft order was submitted for Ministerial consultation on 30 September in order to expedite the process for finalising following Cabinet. No significant feedback was received.
- The order must be signed today (Monday 5 October) in order to come into effect at 11:59pm on Wednesday 7 October 2020 as intended.

PROACTIVELY RELEASED

Recommendations

We recommend you:

- a) **note** that Cabinet agreed to move Auckland to Alert level 1 at 11:59 pm on Wednesday 7 October. Yes No
- b) **note** the COVID-19 Public Health Response (Alert Level Requirements) Amendment Order (No 3) 2020 gives effect to the above decision. Yes No
- c) **note** consultation has been undertaken with the Prime Minister and the Minister of Justice on the attached Order, as required by the COVID-19 Public Health Response Act. Yes No
- d) **note** my advice that the measures in the attached Order are appropriate to address the public health risk and constitute a minimal and justifiable limitation on the rights engaged. Yes No
- e) **Sign** the COVID-19 Public Health Response (Alert Level Requirements) Amendment Order (No 3) 2020. Yes No



Dr Ashley Bloomfield
Director-General of Health



Hon Chris Hipkins
Minister of Health
Date: 5/10/2020

PROACTIVELY RELEASED

COVID-19 Alert Level 2 Amendment Order

Background

1. On Monday 5 October 2020, Cabinet agreed to move Auckland to Alert Level 1.
2. The COVID-19 Public Health Response (Alert Level Requirements) Amendment Order (No 3) 2020 gives effect to the decisions above.

Alert Level 1 requirements

1. At Alert Level 1, the risk of undetected community transmission is judged to be very low. There may remain some active cases of COVID-19 but these should be well managed and contained. Public health control measures have been designed to be proportionate to this low level of risk.
2. Work places will continue to be required to display QR codes for the NZ COVID Tracer app.
3. The core message at Alert Level 1 is to "Prepare", with the COVID-19 response in large part relying on people to adopt and reinforce good public health behaviours without compulsion or enforcement activities. These behaviours remain core to controlling the spread of COVID-19 at any alert level and include:
 - i. keep a record of movements, ideally using the app
 - ii. hand hygiene
 - iii. regular cleaning of surfaces
 - iv. sneezing and coughing etiquette
 - v. stay home if sick and seeking a test if sick with possible COVID-19 symptoms.

Content of the Order

3. The Order amends the COVID-19 Public Health Response (Alert Level Requirements) Order 2020.
4. It amends the application clause so the requirements apply across the whole of the New Zealand, rather than separately to Auckland and other regions. It revokes the Level 2 provisions requiring physical separation and limiting gatherings. It also amends the interpretation section to reflect these changes.
5. The remaining regulatory requirement on businesses is that workplaces will continue to be required to display QR codes for the NZ COVID Tracer app. This is a continuation of the existing requirement.
6. The provisions for exclusions and authorisations (Part 4) also remain. Not all of those provisions will be required in Level 1; but will be required in the event of a future outbreak, so Part 4 is left unamended to ensure all necessary provisions are in place immediately if needed, rather than having to be redrafted.

Bill of Rights implications

4. The requirement to display a QR code engages the right to freedom of expression. The Order must only impose reasonable limits on rights in the Act to the extent demonstrably justified in a free and democratic society.
5. The requirement to display a QR code is a continuation of an existing requirement. The posters displaying the code do not require the person displaying them to express a political or social view, but simply enjoin their audience to 'Sign In. Stop the virus'. To the extent that the requirement to display the code limits the right to freedom of expression, I consider it a minimal and justified limitation, given the risk of COVID-19 and the value of rapid contact tracing.

Regulatory impact

6. The proposed Order repeals unnecessary provisions so does not require impact analysis.

Process for making an order

7. Under 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) or
 - c. it has been authorised by the Prime Minister.
8. There is currently an Epidemic Notice in place, which allows orders to be made under section 11 of the COVID-19 Act. The current epidemic notice will expire (unless otherwise renewed) on 23 December 2020.
9. As the Minister of Health, you may make orders under section 11 of the COVID-19 Act. You must:
 - a. have regard to advice from the Director-General of Health on the risk of spread of COVID-19, and the appropriate measures to address those risks;
 - b. consult with the Prime Minister, the Minister of Justice and may consult any other Minister you think fit;
 - c. be satisfied the Order is a justified limitation on the rights and freedoms in the New Zealand Bill of Rights Act 1990;
 - d. be satisfied the Order will achieve the purposes of the COVID-19 Public Health Response Act 2020.
10. The purpose of the COVID-19 Public Health Response Act 2020 is to support 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); and
 - b. avoids, mitigates, or remedies the actual or potential adverse effects of the COVID-19 outbreak (whether direct or indirect); and
 - c. is co-ordinated, orderly, and proportionate; and

- d. allows social, economic, and other factors to be taken into account where it is relevant to do so; and
- e. is economically sustainable and allows for the recovery of MIQF costs; and
- f. has enforceable measures, in addition to the relevant voluntary measures and public health and other guidance that also support that response.

Review of the order

- 11. The Ministry will keep the order under constant review to ensure that the measures it imposes continue to be justified limitations of the relevant rights under NZBORA.
- 12. Under section 17 of the COVID-19 Act, a section 11 order is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives as soon as practicable. Further, under section 16, a resolution must be passed by Parliament in order to approve the order within 10 sitting days (or 60 days total). If no such resolution is passed, the amendment will be automatically revoked.

Next steps

- 13. **I recommend that you sign the attached COVID-19 Public Health Response (Alert Level Requirements) Amendment Order (No 3) 2020.**
- 14. Orders must be published in the Gazette and online at least 48 hours before they come into force. Once you have signed the attached Order, your Office will arrange for it to be published.