

# Briefing

## COVID-19: Amendments to the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020

<b>Date due to MO:</b>	20/11/2020	<b>Action required by:</b>	25/11/2020
<b>Security level:</b>	IN CONFIDENCE	<b>Health Report number:</b>	20201816
<b>To:</b>	Hon Chris Hipkins, Minister for COVID-19 Response		
<b>Copy to:</b>	Hon Meka Whaitiri, Minister of Customs Hon Andrew Little, Minister of Health Hon Michael Wood, Minister of Transport		

### Contact for telephone discussion

Name	Position	Telephone
<b>Ashley Bloomfield</b>	Director-General of Health	s 9(2)(a)
<b>Maree Roberts</b>	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 Withdrawn |  |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: Amendments to the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020

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**Security level:** IN CONFIDENCE      **Date:** 20 November 2020

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

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## Purpose of report

This report proposes a number of minor and technical amendments to the COVID-19 Public Health Response (Maritime Border) Order (No.2) 2020 (the Order) to better support the operationalisation of the settings required to manage the public health risk of COVID-19 at our maritime borders. Proposed amendments have considered measures to further enhance safety, whilst also supporting our maritime economy to operate with the minimum amount of disruption possible.

The Order is reviewed quarterly. Under section 14(5) of the COVID-19 Public Health Response Act 2020 (the Act), the responsible Minister and the Director-General must keep their COVID-19 Orders issued under the Act under review.

## Summary

The proposed amendments are intended to further mitigate the risk of COVID-19 at the maritime border, enabling safe maritime activities while minimising the impacts on our maritime economy to the greatest extent possible. The proposed key changes include:

- a clearer exemption process and framework for the controlled arrival of ships in New Zealand for delivery of a ship and repair, refit and refurbishment
- better management of certain aspects of crew changes, including PPE use by crew and controls on direct transfer
- strengthened requirements for PPE use by crew
- strengthening enforcement at ports for ships in quarantine or isolation
- aligning maritime border requirements with the air border.

## Recommendations

We recommend you:

- a) **Agree** to make the proposed changes to the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 to:
- Yes/No
- provide a clearer exemptions framework for delivering the ship to a business and carrying out a repair, refit or refurbishment of a ship
  - strengthen the use of PPE by crew and New Zealand based workers

- iii. strengthen enforcement at ports for ships in quarantine or isolation
  - iv. strengthen enforcement powers for Customs Officers situated at ports
  - v. align maritime border requirements with the air border.
- b) **Agree** to the Ministry of Health issuing drafting instructions to the Parliamentary Counsel Office to make amendments to the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 Yes/No
- c) **Note** that, subject to your agreement, you will be provided with a further Health Report covering draft amendments to the Order, for consultation with relevant Ministers.



Dr Ashley Bloomfield  
**Director-General of Health**  
**Ministry of Health**  
Date: 22/11/2020



Hon Chris Hipkins  
**Minister for COVID-19 Response**  
Date: 25/11/20

PROACTIVELY RELEASED

# COVID-19: Amendments to the COVID-19 Public Health response (Maritime Border) Order (No 2) 2020

## Background

1. A key part of New Zealand's COVID-19 elimination strategy involves protecting our borders to ensure cases of COVID-19 are not imported into the community.
2. The COVID-19 Public Health Response (Maritime Border) Order No 2 2020 was made under sections 11 and 15 of the COVID-19 Public Health Response Act 2020 (the Act) and gazetted in September 2020. It is administered by the Ministry of Health.
3. The purpose of the Order is to prevent and limit the risk of an outbreak or the spread of COVID-19 by:
  - a) restricting which ships may arrive in New Zealand
  - b) continuing isolation or quarantine requirements for people who arrive in New Zealand by sea
  - c) enabling the safe transfer of crew.

## Ships repair, refit or refurbishment exemptions policy and process

4. Cabinet agreed to a maritime border exemptions process for both vessels and their crews. The exemption enables marine crew to bring 'work' to New Zealand to support the economic recovery. This support is in the form of fish for onshore processing, yachts for repair, refit or refurbishment and the resupply and provisioning of vessels [CAB-20-SUB-0268 refers].
5. The intent of the exemption power is to support economic recovery, particularly in small coastal towns where the boat building industry is a primary source of income, whilst managing the public health risk. New Zealand is well respected for its world-class boat building industry and the New Zealand Government has acknowledged the economic value that visiting commercial vessels and yachts bring to this industry.
6. However, the operationalisation of the exemption regime has highlighted a number of opportunities to make the process simpler, clearer and more efficient. Additionally, over the summer period and in the lead up to the America's Cup in March 2021 there is likely to be an increase in applications for exemptions to the Maritime Border Order, which will add significant pressure to the system for assessing and processing applications. This makes streamlining the exemption regime even more important.

### *Proposed amendments to support better operationalisation of the policy intent*

7. Currently, clauses 11(1)(a)(ii) and (iii) of the Order allow the Director-General of Health to permit a ship to arrive in New Zealand if reasonably satisfied the ship has a compelling need to arrive in New Zealand to deliver the ship to a business or carry out a refit or a refurbishment of, or a repair to, a ship that is more than minor.
8. In doing so, clause 12(1) provides that the Director-General may take into account:

- a) the nature and type of work to be undertaken on the ship
  - b) the monetary value of the work being undertaken
  - c) the need to support the economic recovery of marine-related industries in New Zealand
  - d) any other matter the Director-General considers relevant.
9. The requirement for the Director-General to give permission for a ship to arrive into New Zealand due to its "compelling need", when applied in practice is difficult to align with the policy intent of supporting economic recovery. This is because there is not a clear mandate in the current Order for ships to be allowed into New Zealand for economic purposes.
10. To give better effect to the original policy intent we propose amending the Order so that the threshold for permission to enter New Zealand is a need that is "more than minor". This framing allows for a consideration of the support that these ships provides for New Zealand's economic recovery whilst maintaining a strong border from a public health perspective.
11. We also propose that amendments be made to clarify that the Director-General must take into account certain criteria in making the decision to permit a ship to enter New Zealand, including the:
- a) ship urgently needs to enter and have a refit, refurbishment and repair or urgent delivery of a ship
  - b) monetary contribution of the refit, refurbishment or repair work to New Zealand's economy
  - c) degree of risk the crew of the ship poses to New Zealanders from COVID-19 and related health concerns
  - d) likelihood of adherence to immigration, customs and other compliance requirements; and
  - e) likelihood of administrative costs required to carry out activities related to ensuring compliance with the Order at the maritime border.
12. s 9(2)(h)
13. Officials also recommend that the following information requirements for exemption applications be included in the Order, to inform the Director-General's decision:
- a) the number of crew and their nationality, particularly any New Zealand citizens or permanent residents returning home
  - b) the ship's flag state, size and name
  - c) the ship's current location
  - d) the ship's voyage history including the last port before arriving in New Zealand
  - e) the length of time and nature of the voyage to come to New Zealand
  - f) the reasons for coming to New Zealand, including detailed proof of works to be carried out and/or a signed contract showing the economic benefit
  - g) the crew's state of health
  - h) the measures that have currently been taken, and will be taken, to ensure the crew are not infected with COVID-19, including not coming into contact with other persons during the voyage
  - i) the self-isolation plan of the crew

- j) other information that may be relevant to prevent and limit the risk of an outbreak, or the spread, of COVID-19.
14. We recommend that a provision be included in the Order for an applicant who intends to repair, refit or refurbish a ship to provide proof that it is "more than minor". This will require that the applicant supplies evidence that the need for the ship to enter meets or exceeds the necessary threshold. An indicative figure is around \$50,000. However we also propose that a value lower than this threshold be considered if other significant reasons exist related to the purpose of the Order, the safety of crew onboard, biosecurity reasons or similar.
15. These information requirements and the Director-General's discretion to refuse entry on any grounds will likely help ensure the exemption does not pose an increased risk to public health and is not misused to gain inappropriate entry into New Zealand. The requirements will also provide a clearer basis to decline or accept exemption applications through the requirements being codified in the Order.

#### *Strengthening the ability to refuse entry on health grounds*

16. Under the Order the Director-General is not required to grant permission for every case that meets the threshold described above provided the decision is reasonable and is consistent with the primary objectives of the Order. These objectives include preventing and limiting the risk of an outbreak, or the spread of COVID-19 by restricting which ships may arrive in New Zealand.
17. Under the proposed amendments, the Director-General would be required to take into account the degree of risk the crew of the ship pose to New Zealanders from COVID-19 and related health concerns.
18. These requirements give the Director-General significant power to decline applications based on public health risk relating to COVID-19 posed by any ship arriving in New Zealand. This may include a consideration of the resources required to monitor or enforce any isolation or quarantine requirements on ships, and whether it would overstretch the available resources to manage the safe quarantine or isolation of the crew arriving with the vessels. This power is an important mitigation against any potential 'surge' in applications.
19. Officials propose codifying these conditions in the Order to increase the transparency of the process in particular for declined applications.

#### *Ensuring ships meet their conditions of entry*

20. Currently, once a ship has been exempted under the Order, there are no explicit additional controls or post-entry checks to provide assurance they will operate within the conditions of the agreed exemption.
21. Under the current Order the Director-General may add conditions that a ship entering New Zealand that its crew must comply with after receiving an exemption. The Ministry proposes an amendment to make explicit that these conditions apply within New Zealand waters. This will provide the ability for officials to ensure ships follow any post-entry instructions given as part of the exemption and provides another tool to manage public health risk.
22. We are proposing to introduce a new, stronger assurance framework into the Order for when ships are granted permission to enter New Zealand. The aim would be to ensure

that the transit of ships to a business or repair, refit or refurbishment work on a ship is actually carried out. Customs NZ has also requested the assurance framework is strengthened.

23. The conditions the Director-General would apply to the crew of ships entering under an exemption may include, but are not limited to:
- a) compliance with the isolation management plan
  - b) maintaining contact with New Zealand authorities including advising of proposed arrival time before departing their current location
  - c) compliance with any directions upon arrival including as to where they may berth
  - d) providing any evidence requested to show that work has been completed
  - e) obtaining any requisite visas from Immigration New Zealand before arrival in New Zealand
  - f) compliance with any directions of a medical officer of health
  - g) compliance with the requirements of the Order and the Act, including testing and isolation requirements.

### **Strengthening PPE requirements**

24. Currently, the Order does not require personal protection equipment (PPE), such as face coverings, to be worn by crew on ships in isolation or quarantine when a necessary New Zealand-based worker boards the ship. This poses a potential risk to New Zealand-based port workers and others who board the ship for necessary tasks.
25. The primary mitigation factor provided by PPE is ensuring those who may have COVID-19 do not spread it to others. There is evidence that wearing a mask can reduce the risk of infected people spreading COVID-19 in situations where transmission is present and people are in enclosed spaces such as a ship.

#### *New Zealand based Workers*

26. The current Order requires PPE to be worn by all those who are undertaking a necessary task and are boarding a vessel. To provide clarity on the expectations for PPE use by port-side workers engaging in these activities, we recommend explicitly mentioning in the Order the legal framework for the PPE requirements. That is PPE is required to be worn in accordance with the Health and Safety at Work Act (HSWA), as regulators for ports and that persons conducting business (PCBUs) have an obligation to ensure all reasonable steps are taken to prevent the spread of COVID-19.

#### *Ship's crew*

27. We recommend mandating the use of PPE for crew members onboard a ship that have not met the low-risk indicators (14 days isolation and a negative COVID-19 test) whenever a New Zealand based worker is aboard the ship and it is necessary for the crew member to come into close contact with the New Zealand based worker.
28. This will improve safety for New Zealand-based workers and further manage the risk of COVID-19 from incoming crew. We also propose there be an exception from wearing PPE for crew that have met the low-risk indicators, unless otherwise required during the normal course of their activities.

## Enforcement at ports

29. Customs have raised concerns about an observable increase in non-compliant behaviour in port environments. There are currently no enforcement powers in the Order for Customs officers to deal with non-compliance.
30. We propose an enforcement power be included in the Order for Customs officers to direct non-compliant port-side workers off the port. The ability for enforcement officers to remove individuals who are not complying is considered an important tool for risk mitigation and would help to further promote compliance with border measures and manage the risk of COVID-19 transmission in the port environment.

## Further minor amendments to improve management of public health risk

31. There are a number of further minor amendments that have been identified by front-line agencies that would support both the management of public health risk and the operation of the border controls. The key amendments are set out below.

### *Controls on direct transfer from airport to ship*

32. Currently, clause 29 of the Order requires a crew member in most but not all crew change situations to follow the directions of the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE). Effectively, the New Zealand Defence Force and MBIE approve travel plans for all maritime crew undertaking crew changes in New Zealand.
33. To strengthen the system and codify current practice, we propose to amend amendments to the Order so all travel related to crew changes needs to be approved by the Chief Executive of MBIE.

### *Controls on where incoming crew quarantine or isolate*

34. Currently, the wording of clause 17 of the Order requires crew who arrive in New Zealand on a ship to remain in isolation or quarantine for at least 14 days and until they meet the low risk indicators. However, the specific wording has resulted in an unintended discrepancy where officials are not able to control whether incoming crew isolate on board their ship, or in a MIF facility.
35. This has caused issues for Officials processing isolation and quarantine requirements for incoming ships, particularly pleasure craft that often arrive prior to the end of the 14 day period and are not able to:
  - a) safely isolate onboard their ship
  - b) have not presented a suitable isolation or quarantine plan
  - c) are likely to pose compliance issues with the crew isolating onboard their ship.
36. In these instances, to reduce the potential risk of COVID-19 transmission the crew pose as they do not meet the low risk indicators, direct transfer to a MIF to complete the 14 day isolation period is required.
37. We recommend including a decision-maker function for a Customs Officer or a Medical Officer of Health to determine whether crew isolate onboard or are transferred to a MIF. This will grant officials control over where incoming crew carry out the 14 day isolation



period and ensure that the risk of COVID-19 posed by incoming crew is managed effectively.

#### *Signage requirement for ships in quarantine or isolation*

38. Currently, there is inconsistent use of signs on berths to signal that a ship is in quarantine or isolation. This creates a risk that port workers or other members of the public may inadvertently come into contact with these ships. We propose mandatory requirements for ships in isolation or quarantine to display a consistent standard of clear and appropriate signage in the form of a poster at entry and exit points on ships in a quarantine berth.

#### *Movement of ships in marinas with quarantine berths*

39. Clause 24(4) of the Order prevents any ship from being 50 metres from a ship in isolation or quarantine. This is operationally impractical as ships move through narrow spaces while arriving and departing (for example at Opuia marina)<sup>1</sup>. This results in an inadvertent contravention of the Order that poses a negligible public health risk.
40. We recommend that this clause be amended to allow for discretion to be applied to ensure there is an ability for ships to come within 50 metres of each other, for example when entering or exiting a port area, where it is impossible for them to maintain 50 metres; but only when there is negligible public health risk associated with that distance.

### **Aligning maritime border and air border immigration requirements**

41. Currently, people who are permitted to enter New Zealand under the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (Air Border Order), for example partners of New Zealand citizens are required to apply for an exemption under the Order to enter New Zealand on a ship.
42. Unlike the air border, no clear exemption exists under the Maritime Border Order causing inconsistent treatment of persons across the two Orders. These individuals, including partners or dependent children of a New Zealand citizen or resident, are low risk generally. The process to administer exemptions for the maritime border creates unnecessary burden on officials.
43. The inconsistency in entry requirements across the Maritime Border Order and Air Border Order has no policy rationale and is unnecessary. Therefore, we recommend a discretionary exemption be included so these individuals can apply to enter New Zealand via the maritime border in the same way as the air border.

### **Next steps**

44. Subject to your agreement, the Ministry of Health will issue drafting instructions to PCO to make amendments to the Orders to give effect to the proposed requirements. It will be provided to you for consideration and Ministerial consultation.

**ENDS.**

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<sup>1</sup> The main entry and exit point at Opuia marina is situated at the end of the breakwater that is also being used as an area for the isolation and quarantine of ships. Despite a one-way system being put in place, some ships leaving the marina may be inadvertently contravening the Order.