

Health Report

COVID-19 Public Health Response (Air Border) Amendment Order 2020

Date due to MO: 28 October 2020 **Action required by:** 30 October 2020

Security level: IN CONFIDENCE **Health Report number:** 20201859

To: Hon Chris Hipkins, Minister of Health

Copy to: Hon Dr Megan Woods, Minister of Housing
Hon Phil Twyford, Minister of Transport
Hon Kris Faafoi, Minister for Immigration

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)

Action for Private Secretaries

Forward copy of the report to the Minister of Housing, Minister for Transport and Minister for Immigration.

Date dispatched to MO:

Return the signed report to the Ministry of Health.

COVID-19 Public Health Response (Air Border) Amendment Order 2020

This report recommends that you consult with the Prime Minister and Minister of Justice on the draft Order attached as Appendix One - COVID-19 Public Health Response (Air Border) Amendment Order 2020 (the Order). The effect of this Order would be to amend the COVID-19 Public Health Response (Air Border) Order (No. 2) 2020, to require passengers to use and airlines to assist with the use of the Managed Isolation Allocation System (MIAS), to 'book' spaces online in managed isolation and quarantine facilities (MIQF) prior to their arrival in New Zealand.

Key points

- The MIAS allows people wanting to travel to New Zealand to 'book' online a place in a MIQF. It is designed to be a flow management tool, as demand for MIQF places is expected to outstrip the available supply. The system is managed by Ministry for Business Innovation and Employment (MBIE) as part of its responsibility for the administration of MIQFs.
- The MIAS has been live since October 5, and is presently being used on a voluntary basis under a regulatory grace period. The purpose of this grace period was to allow the following before MIAS became compulsory:
 - a planned awareness campaign to inform passengers about MIAS and how to use it;
 - airlines to train their staff in checking that passengers are using MIAS; and
 - to fully test the system and respond to issues, noting that MBIE is taking a 'continuous improvement' approach to IT system implementation and operational procedures. This means they have acknowledged that issues may arise following this grace period, but these can be adequately addressed.
- On 11 September 2020, you agreed to amend the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 to make it a legal requirement for all people entering New Zealand to have a place booked in a MIQF using the MIAS [MBIE briefing 2021-0722 refers].¹
- It was agreed that this legal requirement would come into force on 3 November 2020, unless significant issues were identified with the system. MBIE has confirmed that to date, it considers the objectives of the grace period have been met and the system is ready to be made compulsory on 3 November 2020. The draft Order attached as Appendix One will give effect to this decision.
- To make or amend an Order under section 11 of the COVID-19 Public Health Response Act 2020 (COVID-19 Act) you must:
 - receive advice from the Director-General about –

¹ MBIE Briefing, Implementation on Managed Isolation Allocation System [2021-0722].

- the risks of the outbreak or spread of COVID-19, and
- the nature and extent of measures that are appropriate to address those risks, and
- 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
- 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 2020, and
- consult with the Prime Minister, the Minister of Justice and any other Ministers you think necessary, and
- be satisfied that the Order is appropriate to achieve the purpose of the COVID-19 Act.

Recommendations

The Ministry recommends that you:

- | | |
|---|----------------------|
| <p>a) Note advice from the Director-General of Health on the prerequisites for making an Order under the COVID-19 Public Health Response Act 2020, including:</p> <ul style="list-style-type: none"> • the risks of an outbreak or spread of COVID-19, and • the nature and extent of measures that are appropriate to address those risks. | <p>Yes/No</p> |
| <p>b) Note that advice from the Director-General of Health is that the COVID-19 Public Health Response (Air Border) Amendment Order 2020 is in line with the purpose of the COVID-19 Public Health Response Act 2020 to prevent, and limit the risk of, the outbreak or spread of COVID-19 by assisting with the important public health measure of managing the isolation of arrivals into New Zealand.</p> | <p>Yes/No</p> |
| <p>b) Consult with the Prime Minister and Minister of Justice, and any other relevant Ministers on the attached COVID-19 Public Health Response (Air Border) Amendment Order 2020.</p> | <p>Yes/No</p> |



Dr Ashley Bloomfield
Director-General of Health

Hon Chris Hipkins
Minister of Health

Date:

COVID-19 Public Health Response (Air Border) Amendment Order 2020

Background

1. On July 1 2020, the Cabinet Social Wellbeing Committee (authorised by Cabinet with powers to Act) agreed to:
 - a. put in place a flow management system that would apply to all New Zealand citizens, residents and visa holders coming into New Zealand; and
 - b. introduce a legal requirement for all passengers to have a pre-booked place in a managed isolation and quarantine facility (MIQF) before entering New Zealand by air [SWC-20-MIN-0094 refers]
2. On 11 September 2020 MBIE provided you with a briefing [MBIE - 2021-0722 refers]² on the proposed timeline for implementing the Managed Isolation Allocation System (MIAS). As outlined in the briefing, the MIAS has been operating since October 5 under a regulatory grace period. The purpose of this grace period was to allow the following before MIAS became compulsory:
 - a. a planned awareness campaign to inform passengers about MIAS and how to use it;
 - b. airlines to train their staff in checking that passengers are using MIAS; and
 - c. to fully test the system and respond to issues, noting that MBIE is taking a 'continuous improvement' approach to IT system implementation and operational procedures. This means they have acknowledged that issues may arise following this grace period, but these can be adequately addressed.
3. It was agreed that use of the MIAS would become a legal requirement 3 November 2020, unless significant issues were identified with the system. MBIE has confirmed that they consider the objectives of the grace period have been met and the system is ready to be made compulsory on 3 November 2020.
4. The MIAS replaces a quota system where airlines have a cap on the number of passengers they can bring into New Zealand and a MIQF. The MIAS will more efficiently manage the safe flow of people into New Zealand by providing advance information about the amount of people wishing to return to New Zealand and timeframes for their return.
5. The briefing [MBIE 2021-0722 refers] also provided background on the system, and how it will operate and outlined the benefits of the system such as assisting with capacity planning and increased utilisation of MIQFs.
6. The following legal instruments were agreed for implementation:
 - a. an amendment to the COVID-19 Public Health Response (Air Border) Order (No. 2) to require:

² The briefing was also provided to the Minister of Transport, Minister of Housing, Minister of Immigration and Minister of Justice.

- i. all arrivals by air to provide evidence (in the form of a voucher from the MIAS system or verbal confirmation) that they have booked and been allocated a place into a MIQF (an enforcement officer will have to be satisfied there is reasonable evidence of a booking) and
 - ii. airlines to ensure that all passengers travelling to New Zealand have evidence of an allocation from the MIAS before allowing an aircraft to arrive in New Zealand.
 - b. to assist with compliance, the following was also agreed:
 - i. introduction of an infringement offence for failure to comply with the obligations in a(i) and (ii) above, of a \$300 infringement fee or a \$1,000 fine imposed by the court; and
- 7. As with other offences under the COVID-19 Public Health Response Act 2020 (COVID-19 Act) a graduated approach to enforcement will be recommended. Any enforcement would be undertaken by enforcement officers as listed under section 5 (1) of the COVID-19 Act or any other person or class of person authorised by the Director-General to have functions and powers of enforcement officers.
- 8. In the initial briefing [MBIE 2021-0722 refers], new Immigration Instructions to allow foreign nationals to be denied entry without the above requirements were recommended as additional legal instruments.
- 9. On further analysis, MBIE has determined that new Immigration Instructions are not necessary as there are already existing immigration legal mechanisms which are sufficient to prevent entry of foreign nationals who do not have a voucher and who do not have an automatic right of entry under the Immigration Act.
- 10. An amendment is not required to the COVID-19 Public Health Response (Maritime Border) Order 2020. Maritime arrivals are not required to book via the MIAS and processed manually due to their arrival times and required lengths of managed isolation varying at short notice.
- 11. The draft Order attached as Appendix One gives effect to the requirements outlined in a(i) and (ii), and b(i) above.

Process

- 12. 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.
- 13. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the COVID-19 Act.
- 14. As the Minister of Health, you may make Orders under section 11 of the COVID-19 Act.
- 15. To make an Order under section 11 you must have:
 - a. 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; and
 - b. 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
 - c. you are required to consult with the Prime Minister and Minister of Justice on any proposed orders.; and
 - d. you must be satisfied that this order is appropriate to achieve the purpose of that Act.
16. 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.

Public health rationale for amendments

17. All arrivals to New Zealand by air (except exempted arrivals³) are currently required to enter a managed facility for 14 days of quarantine or isolation. This policy setting has proven critical for New Zealand's management of COVID-19, and mitigation of the risk of its spread into the community.
18. The MIAS allows for MBIE to improve its ability to provide this service by assisting with capacity planning.
19. Public health risks present themselves if MBIE cannot adequately capacity plan and have to stand up emergency MIQFs at short notice. For example, this could pose an increased risk if Infection Prevention Control measures could not be adequately followed and/or if there was an inability to resource the MIQFs with appropriate health and security staff.
20. As outlined, MIAS has been live since October 5 and MBIE has advised that there have not been any significant issues with its operation, and it is meeting its purposes as a flow management tool.
21. Therefore, these amendments are in line with the purpose of the COVID-19 Act to prevent, and limit the risk of, the outbreak or spread of COVID-19 by assisting with provision isolation and quarantine requirements for arrivals into New Zealand.

New Zealand Bill of Rights Act [Legally privileged]

22. s 9(2)(h)



23.

³ Detailed in Part 3 of the COVID-19 Public Health Response (Air Border) Order (No. 2).

24. s 9(2)(h)

25.

26.

27.

28.

29.

30.

31.

Next steps

32. As per the COVID-19 Act you must consult on the proposed amendments with the Prime Minister and the Minister of Justice, and with other Ministers as you see fit.

33. Following Ministerial consultation, we will finalise the Amendment Order, and provide you with a version for signing on 30 October 2020.

ENDS.

PROACTIVELY RELEASED

Appendix 1: Draft COVID-19 Public Health Response (Air Border) Amendment Order 2020

The final order is publicly available at: <https://www.legislation.govt.nz/regulation/public/2022/0075/latest/LMS664421.html>

PROACTIVELY RELEASED