

# Health Report

## Further exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for repositioning aircrew

**Date due to MO:** 2 November 2020      **Action required by:** 3 November 2020

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**Security level:** IN CONFIDENCE      **Health Report number:** 20201903

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**To:** Hon Minister Hipkins, Minister of Health

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### Contact for telephone discussion

Name	Position	Telephone
<b>Dr 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)

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### Action for Private Secretaries

**Return** the signed report to the Ministry of Health.

**Date dispatched to MO:**

# Further exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for repositioning aircrew

## Purpose of report

This report recommends that you grant a further exemption from clause 8(2) and 8(3) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for repositioning crew flying to New Zealand between 3 November 2020 and 20 December 2020.

## Summary

- On 20 October 2020 you approved an exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (the Order) for 'repositioning crew'.
- The exemption from the Order means that repositioning crew are subject to the same rules as other New Zealand-based air crew, that is, they are not required to enter managed isolation upon arrival in New Zealand (however, air crew returning from certain high-risk layovers may be required to self-isolate).
- The exemption was initially made for two weeks (from 20 October to 3 November), to address an immediate problem of air crew being 'stuck' in Australia and unable to return without facing two weeks in managed isolation.
- The intention was for the Ministry to use this time to consider options for a permanent solution for covering repositioning crew in an amendment to the Order.
- Over the last two weeks, it has become clear that there are a number of similar and potentially linked issues relating to the definition of air crew under the Order, and that any changes are likely to be more complex than simply inserting repositioning crew into the definition of aircrew in the Order.
- In addition, there are a number of other issues that may need to be addressed in a future amendment, including issues around crew exercise on layovers and self-isolation, the location of crew socialisation on layovers, and the definition of 'fellow crew members'.
- Therefore, the Ministry considers that the best approach is to issue a further exemption for repositioning crew until 20 December, rather than immediately amending the Order, to ensure that any future amendment to the Order is comprehensively drafted and avoids further unintended consequences.

## Recommendations

We recommend you:

- a) **Note** that under the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 you may exempt any person or class of persons from the requirement to comply with any provision of the Order. **Yes/No**
- b) **Note** that under the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 you must take into account the advice of the Director-General when deciding whether to grant an exemption and what, if any, conditions to impose on an exemption. **Yes/No**
- c) **Note** that I consider there is a low risk that granting an exemption to repositioning aircrew will contribute to the outbreak or spread of COVID-19 in New Zealand. The risk associated with repositioning aircrew in general is low and each repositioning crew member will be required to complete a health declaration in order to for the exemption to be granted. **Yes/No**
- d) **Note** that the requirement to complete a health check is a change from the previous exemption, which required all repositioning crew to undergo a risk assessment by a Medical Officer of Health. **Yes/No**
- e) **Note** that I consider that this exemption is required rather than immediately amending the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 due to the potential complexity involved in amending the Order. **Yes/No**
- f) **Sign** the attached Exemption Notice that grants an exemption from clauses 8(2) and 8(3) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for repositioning crew flying to New Zealand between 3 November and 20 December 2020. **Yes/No**



Dr Ashley Bloomfield  
**Director-General of Health**  
Date: 2/11/2020

Hon Chris Hipkins  
**Minister of Health**  
Date:

# Further exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for repositioning aircrew

## Background

1. On 4 October 2020 the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (the Order) was amended to include strengthened regulations for aircrew who travel internationally.
2. On 20 October 2020 you approved an exemption from certain requirements of the Order for repositioning aircrew. Under the exemption, some repositioning aircrew are not required to enter managed isolation upon return to New Zealand, if they meet certain conditions.
3. The exemption was drafted to apply to crew arriving in New Zealand until 3 November. This timeframe was initially used to give the Ministry time to assess the immediate situation and allow crew who were currently overseas to return to New Zealand. The Ministry indicated that it would review the position in relation to repositioning air crew over the 2-3 weeks following 20 October to determine whether an amendment to the Order would be justified.
4. The Ministry indicated that if an amendment to the Order was not able to be made by 3 November, a further exemption would be considered [HR 20201866 refers].
5. Upon reviewing the situation, the Ministry considers that while an amendment to the Order may be justified, the issue of repositioning crew is complex, and may be connected to a range of other operational issues arising from the current Order.
6. In addition, Air New Zealand has indicated that repeated changes to the Order will cause confusion and uncertainty among their crew, and may result in a lack of compliance. This is an important risk to mitigate, and the Ministry considers that any further amendments to the Order should be comprehensive and well-considered.
7. Taking these factors into account, we recommend that the extension as drafted apply to crew traveling until 20 December 2020. This will allow the Ministry time to engage with relevant stakeholders and draft comprehensive and effective amendments to the Order if requested.

## Statutory power for granting an exemption

8. Under clause 15 of the Order you may exempt any person or class of person from the requirement to comply with any provision of the Order if you are satisfied that:
  - a. the exemption is necessary and desirable in order to promote the purposes of the COVID-19 Public Health Response Act (the Act) or the purposes of this Order, and
  - b. the extent of the exemption is not broader than is reasonably necessary to address the matters giving rise to the exemption.

9. When deciding whether to grant an exemption and what (if any) conditions to impose you must take into account my advice on the public health implications.
10. Section 4 of the Act outlines the Act's purpose as supporting 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. allows social, economic and other factors to be taken into account where it is relevant to do so, and
  - d. is economically sustainable and allows for recovery of Managed Isolation and Quarantine Facilities (MIQF) costs, and
  - e. has enforceable measures, in addition to the relevant voluntary measures and public health and other guidance that also supports that response.

#### **Alignment with the purpose of the Act: preventing the spread of COVID-19**

11. The risk of spreading COVID-19 to the community is evaluated taking into account:
  - a. whether the group seeking an exemption are at a lower risk of having been exposed to COVID-19
  - b. whether there are appropriate measures in place to reduce the risk of the spread of COVID-19 to the New Zealand community, and
  - c. whether any conditions or mitigation measures are likely to be complied with and the associated risk if conditions are not complied with.
12. As set out in HR 20201866, the exemption is unlikely to create a significant risk of spreading COVID-19 to the New Zealand community as the repositioning crew:
  - a. are at a low risk of contracting COVID-19
  - b. have taken appropriate precautions while overseas, and
  - c. will be subject to conditions on arrival in New Zealand which will provide additional assurance.

#### *A low risk of exposure to COVID-19*

13. Aircrew are subject to key safety standards that they must meet as part of the Order including meeting certain requirements both in-flight and while on overseas layovers, including wearing Personal Protective Equipment (PPE) and meeting certain requirements during overnight layovers. A condition of the exemption will be that crew have met these key safety standards at all times during their overseas travel.
14. Under the current exemption, repositioning crew are required to undergo a risk assessment by a medical officer of health.
15. Public Health advice is that the requirement for a risk assessment by a medical officer of health is unnecessary and operationally inefficient, and that the risk assessment can take

the form of answering certain questions of the health declaration form and the health check at the airport, as aircrew listed on the manifest currently do.

16. Based on this Public Health advice, under this further exemption, repositioning crew will be required to undertake a health check upon arrival into New Zealand, which will include a symptom check and any other relevant medical examination by public health officials at the airport. The repositioning crew will also fill out the crew health declaration form, which asks for details of their international travel and length of layover (if any). If all questions are answered appropriately from a public health perspective, the exemption is applied. This is the health check that is currently being undertaken on aircrew listed on the manifest returning to New Zealand.
17. If repositioning crew members are unwell it is unlikely that they will be eligible for the exemption.
18. Air New Zealand will continue to report by exception to the Ministry of Health where any crew have failed to meet the key safety standards while overseas or in transit.

#### *Appropriate measures in place to reduce the risk of the spread of COVID-19 to the community*

19. Any exemption request should be considered in conjunction with associated conditions to reduce the risk of the spread of COVID-19 to the community.
20. In this case aircrew are required to comply with all the same safety standards as other crew.

#### *Compliance with any conditions*

21. Consideration should also be given to whether individuals or groups are likely to comply with any conditions on the exemption and potential impact if conditions are not complied with. The Ministry considers that the crew are highly likely to comply with the exemption as they are required to comply with the conditions regularly and are familiar with the requirements such as wearing PPE while on duty.
22. Of note, the current requirements have been in place for repositioning crew since June 2020 and there have not been any issues with compliance.

#### **Alignment with other purposes under the Act**

23. Other purposes under the Act may also be relevant when considering an exemption including the economic impact of the exemption.
24. Air New Zealand have represented that if they do not receive an exemption it is likely that they will have to cancel certain services which may have economic impacts.

#### **The need for a further exemption**

25. The current exemption allows repositioning crew to enter New Zealand without being required to go into managed isolation until Tuesday 3 November.
26. Repositioning crew will continue to require exemption from managed isolation and will continue to be unlikely to create a significant risk of spreading COVID-19 to the community, as outlined above.

27. This means that a more sustainable solution will be needed to continue to exempt repositioning crew from managed isolation. As outlined in HR 20201866, the Ministry has assessed the immediate situation, and reviewed its position in relation to repositioning crew over the last 2-3 weeks.
28. Upon reviewing the situation, the Ministry considers that while an amendment to the Order may be justified, the issue of repositioning crew is complex, and there are a range of similar and potentially linked issues relating to the definition of aircrew under the Order. Therefore, any changes are likely to be quite complex.
29. There are also a number of other issues which are impacting aircrew which may need to be addressed in a future amendment to the Order, including issues related to crew exercise on layovers and self-isolation, the location of crew socialisation on layovers, and the definition of 'fellow crew member'.
30. Air New Zealand has advised officials that repeated changes to the Order will cause confusion and uncertainty among their crew and may result in a lack of compliance. This is an important risk to mitigate, and the Ministry considers that any further amendments to the Order should be comprehensive and well-considered.
31. Therefore, the Ministry considers that the further exemption is necessary to ensure that any future amendments to the Order are carefully considered, and do not lead to any further unintended consequences.

### **Other factors to be taken into consideration**

32. The exemption discretion must be exercised consistently with the New Zealand Bill of Rights Act 1990 (NZBORA).
33. In considering specific exemptions the Ministry will work alongside Crown Law and the Ministry of Justice to provide you with advice on any NZBORA implications associated with the exemption.

34. s 9(2)(h) [REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Next steps**

36. If you sign the attached Exemption Notice, the exemption will come into effect immediately and apply to crew travelling until 20 December 2020.
37. The Ministry will arrange for the Exemption Notice to be published online and in the Gazette.
38. The Ministry will provide you with further policy advice on potential amendments to the Order in the coming weeks.

ENDS.

PROACTIVELY RELEASED

## Gazette notice

### Exemption of persons from clauses 8(2) and 8(3) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020

Pursuant to clause 15 of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 ("Order"), I, Hon Chris Hipkins, Minister of Health, having taken into account the advice of the Director-General of Health, hereby declare that the following persons who satisfy the following criteria are exempt from clauses 8(2) and 8(3) of the Order:

- persons who are returning to New Zealand as part of non-operating air crew after performing in-flight duties ("Repositioning Crew");
- who arrive in New Zealand by air between 3 November 2020 and 20 December 2020; and
- who have met the key safety standards (as defined in the Order) while outside of New Zealand; and
- have reported for and undergone appropriate medical examination and testing for COVID-19 as determined by a suitably qualified health practitioner, as soon as practicable after their arrival, at the airport at which they arrive, and the suitably qualified health practitioner is satisfied that they are unlikely to transmit COVID-19.

The exemption will begin at 11.59pm on 2 November 2020. This exemption expires at 11.59pm on 3 January 2021.

The exemption from clauses 8(2) and 8(3) is subject to the following condition:

if persons subject to this exemption have travelled on a higher-risk route (a route designated higher-risk in accordance with clause 8C of the Order) within seven days immediately before their arrival in New Zealand they must undergo a period of self-isolation (in accordance with the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020).

Dated at Wellington this 3rd day of ~~October~~/November 2020



Hon Chris Hipkins  
Minister of Health