

Briefing

Improving our air border, and isolation and quarantine system

Date due to MO: 11 May 2021 **Action required by:** 19 May 2021

Security level: IN CONFIDENCE **Health Report number:** 20210235

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

Copy to: Hon Andrew Little, Minister of Health

Hon Michael Wood, Minister of Transport

Contact for telephone discussion

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Minister's office to complete:

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| <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 Withdrawn | |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:

Improving our air border, and isolation and quarantine system

Security level: IN CONFIDENCE **Date:** 11 May 2021

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

Purpose of report

1. To support our COVID-19 Elimination Strategy and strengthen our border, this briefing seeks your approval to amend the:
 - a. COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (Air Border Order)
 - b. COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (Isolation and Quarantine Order).

Summary

2. The Air Border Order, and Isolation and Quarantine Order (the Orders) are two of the main legal instruments that support our COVID-19 Elimination Strategy. They are used to prevent COVID-19 entering the community. The Ministry of Health (the Ministry) continually reviews the settings in the Orders to ensure they remain appropriate, fit for purpose and are operationally sustainable. These reviews consider feedback from stakeholders, including government agencies and those in the airline/airport industry.
3. Officials propose several amendments to the Orders to strengthen and improve our air border, and isolation and quarantine system. These amendments are summarised in paragraph five below and described in detail in this briefing.
4. Some of the proposed amendments will support the re-opening of international air routes in a way that does not increase the risk of transmission of COVID-19 into New Zealand. It is essential that the wellbeing of aircrew and passengers, and the health of our community, are protected in the long-term. For this reason, all the proposed amendments have been made with public health as a focus and priority.
5. The proposed amendments include:

Proposals to amend, or include new provisions, within the Orders

- a. clarifying the definition and status of "specified aircrew members" who are domiciled in New Zealand. This will enable us to then clarify the obligations on various classes of aircrew relating to medical examinations, testing, and isolation and quarantine (based on the risk they represent)
- b. enabling places of self-isolation to be designated by the Director-General of Health (the Director-General) based on advice from Ministry officials. This will enable us to formalise current arrangements relating to aircrew staying in the Air New Zealand (AirNZ) self-isolation hotel

- c. clarifying the obligations on passengers on multi-leg flights that transit New Zealand, and flights that are turned back or diverted here due to an emergency. This will enable us to manage the risk these passengers may represent
- d. extending Quarantine Free Travel (QFT) arrangements to defined flights carrying ministerial delegations, and humanitarian and medical evacuees where they are travelling consistent with all QFT prerequisites and obligations

Proposals for new power for the Director-General of Health to grant exemptions

- e. enabling the Director-General to grant exemptions to four new classes of people including aircrew members who are not domiciled in New Zealand, non-aircrew critical operations staff, New Zealand-domiciled aircrew on private and charter flights, and emergency workers. This will continue the risk-based approach to exemptions but reduce your workload as Minister for COVID-19 Response

Proposals to amend the Key Safety Standards that apply to aircrew

- f. requiring airlines to take reasonable steps to ensure that their aircrew members comply with the Key Safety Standards (the Standards) while travelling overseas and enabling a risk-based response to breaches of the Standards
- g. making other amendments to the Standards to ensure they are clear and cover the various classes of aircrew in the range of circumstances in which they may travel overseas for work, including where they travel for longer than seven days, or domestically, overseas

Minor and technical amendments

- h. minor and technical amendments that are necessary to give effect to the proposals and support the principles of good legislative design. One example is to make clear that the requirement for personal protective equipment (PPE) and physical distancing applies to people in an airport whether or not they are travelling to a place of isolation and quarantine.
6. Officials have consulted with the Treasury, Ministry of Foreign Affairs and Trade (MFAT), Ministry of Justice, New Zealand Customs Services, and the Ministries of Business, Innovation and Employment and Transport on these proposals. Officials have also engaged with AirNZ, Qantas, the Board of Airline Representatives New Zealand and airports. Feedback has been incorporated into the paper as appropriate and there is broad support for the proposals.
 7. Subject to your approval, officials will issue drafting instructions to the Parliamentary Counsel Office (PCO) and progress the next steps. This will include further consultation with key stakeholders. We will also support your consultation with relevant Ministers.

Recommendations

8. Officials recommend you:

- a) **Agree** (or otherwise) to the each of proposals to:

Yes **No**

- i. clarify, amend or include new provisions in the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 and COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 as set out in Table One after paragraph 19
 - ii. grant the Director-General of Health the proposed exemption making powers in the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 in Table Two after paragraph 22
 - iii. amend the Key Safety Standards currently in the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 as set out in Table Three after paragraph 25
- b) **Agree** to the Ministry of Health issuing drafting instructions to the Parliamentary Counsel Office to make the recommended amendments including any associated consequential, minor and technical amendments to the:
- a. COVID-19 Public Health Response Act (Air Border) Order (No 2)
 - b. COVID-19 Public Health Response (Isolation and Quarantine) Order 2020
- c) **Note** officials have consulted with key government agencies, along with Air New Zealand, Qantas, the Board of Airline Representatives New Zealand and airports, and feedback has been incorporated into the paper as appropriate **Note**
- d) **Note** that, subject to your agreement, you will be provided with a further Health Report accompanying the draft amendments to the Orders, for consultation with relevant Ministers. **Note**



Dr Ashley Bloomfield
Director-General of Health
Date: 11/05/2021



Hon Chris Hipkins
Minister for COVID-19 Response
Date: 19/5/2021

Proposed improvements to our air border, and isolation and quarantine system

Background and context

9. The Orders are two of the main legal instruments that support our COVID-19 Elimination Strategy. They are used to prevent COVID-19 entering the community. The Ministry continually reviews the settings in the Orders to ensure they remain appropriate, fit for purpose and operationally sustainable (including considering QFT arrangements). These reviews consider feedback from stakeholders, including in the airline/airport industry.
10. As you know, the COVID-19 pandemic and global response is constantly evolving with changing prevalence (both increasing and decreasing) in countries and regions, and the emergence of new variants of the virus. The rollout of vaccination programmes across the world will also have an impact on the evolution of the pandemic.
11. In the context of this changing environment, airlines are considering how they may re-start international travel routes. This briefing presents the results of the agreed review of the Orders to determine what additional measures could be put in place proportionate to the risks represented by various classes of aircrew (see HR 20210583) and other classes of people who may travel to, through and from New Zealand.

Many of the proposals will support safe international travel

12. Many of the proposals in this briefing relate to the need to ensure airlines and their staff comply with the regulatory training requirements that will support safe international travel. The reduction in airlines flying internationally to and from New Zealand, and the changed nature of border requirements overseas has made it difficult for pilots, aircrew and other critical operational staff to undertake regulatory and safety training. This training is necessary for them to maintain required skills, experience and practice.
13. To mitigate the impact of COVID-19, regulators such as the Civil Aviation Authority (CAA) have provided airlines with regulatory relief - in the form of emergency directives and exemptions - from certain Civil Aviation Rules related. This relief cannot be extended indefinitely without introducing an unacceptable increase in safety risk. There is a need for us to ensure there are safe and sensible mechanisms for:
 - a. pilots, aircrew and other staff in safety critical operations roles to remain up to date with regulatory and safety training requirements
 - b. ongoing auditing and certification activities to be carried out to ensure compliance with operational procedures and regulations.
14. Some training (for example, the use of flight simulators to practice emergency procedures), and auditing and certification activities cannot be carried out in New Zealand. AirNZ and Qantas need to send staff, including service engineers, auditors and trainers, to overseas destinations. For example:
 - a. AirNZ has four service engineers that serve all its domestic and international ports. These engineers are New Zealand-domiciled. Pre-COVID-19, they would routinely fly to international ports to undertake work

- b. most Qantas training facilities are in Australia, and New Zealand-domiciled engineers, ground staff and other employees need to attend training in Australia to maintain regulatory currency.
15. Auckland Airport has also requested that the managed isolation and quarantine (MIQ) exemption is extended to encompass airport emergency services officers in the Airport Emergency Services Team undertaking annual “hot fire” training. This training is undertaken in Australia as there are no facilities in New Zealand.
 16. While much of the training and regulatory compliance activities taking place in Australia will be covered through the current QFT arrangements, this is not always the case. AirNZ will also need to bring overseas-based personnel, for example from China, to New Zealand for training and auditing purposes. It will also be useful to have the proposed provisions in the case of QFT being paused or suspended.
 17. The proposed amendments identified in this paper will support the re-opening of borders in the future, in a way that does not increase the risk of transmission of COVID-19 into New Zealand. They have been developed with public health as the central priority and consulted with key stakeholders. Many of the proposed amendments are technical. If agreed, they will result in one or more clauses in the Orders being clarified, amended or expanded.
 18. Of note, further work is being undertaken with our key stakeholders to inform our third quarter advice on the Air Border Order, so it remains fit for purpose consistent with our undertaking in HR 20210583. This work includes to further review and refine the Orders as QFT arrangements are embedded.

Proposals to amend, or include new provisions, within the Orders

19. Table one below includes proposals to clarify, amend and include new provisions in the Orders. The proposals have been identified as necessary or useful by Ministry officials, government agencies or other stakeholders. Most of the proposals relate to the various categories of aircrew who travel to New Zealand. A number are related to all people traveling to, through or from New Zealand.
20. The final proposal is to extend QFT travel arrangements to defined flights carrying ministerial delegations, and humanitarian and medical evacuees where they are travelling consistent with all QFT prerequisites and obligations. This will reduce the need for ad hoc exemptions for these flights which has an element of uncertainty.

Table One: Proposals to clarify, amend or include new provisions in the Orders

What's needed	Rationale
<p>To ensure the obligations on various classes of aircrew in the Orders are clear, a clarification of what it means to be New Zealand-domiciled is proposed.</p> <p>Minister's decision <input checked="" type="checkbox"/> YES / NO</p>	<p>For the Orders and their obligations to be clear, we need to define what it means to be New Zealand-domiciled. We currently use the term “ordinarily resident” which is undefined in the Orders but commonly understood to mean that a person spends at least 183-days in country over the course of a year. Aircrew might not be here for 183 days as they travel a lot. For our purposes, we want domiciled to mean aircrew who have a permanent home here.</p>

What's needed	Rationale
<p>A clarification is proposed to make it clear that New Zealand-domiciled aircrew arriving on private and charter flights are not exempt from requirements relating to medical examination, testing, and isolation and quarantine.</p> <p>Minister's decision: YES / NO</p>	<p>Currently, the definition of "specified aircrew member" in the Orders covers all New Zealand-domiciled aircrew, including those arriving on private and charter flights. This means all these aircrew are exempt from requirements relating to medical examination, testing, and isolation and quarantine.</p> <p>New Zealand-domiciled aircrew arriving on private, and on charter flights flown by non-QFT carriers, are not covered by the arrangements we have in place with AirNZ and Qantas. This represents a risk. We do not have certainty that they are observing the same safety standards as aircrew on AirNZ or Qantas flights which are scheduled international air services. Scheduled services enable repeatable procedures and processes supporting safe travel to be applied.</p> <p>Officials note that some charter flights may be operated by QFT carriers and this proposal will not affect the QFT provisions. In feedback on this paper, a question was raised about extending QFT to private and charter flights generally. Further policy work is required to consider the implications of such an extension. To enable appropriate decision-making in the interim, there is a proposal below (in table two) to allow the Director-General of Health to grant an exemption to "aircrew on private and charter flights" where certain conditions are met.</p>
<p>We are proposing to embed existing temporary legal provisions that permit a Medical Officer of Health to make risk-based isolation or quarantine decisions for domiciled aircrew who:</p> <ul style="list-style-type: none"> • travel overseas for extended periods, or travel domestically overseas, and • comply with the Key Safety Standards. <p>Minister's decision: YES / NO</p>	<p>There is currently an exemption in place for New Zealand-domiciled aircrew that largely gives effect to this proposal, granting a Medical Officer of Health these risk-based decision-making powers. Officials consider the powers are best placed in the Air Border Order itself. This provides a more appropriate legal foundation for the power and means it will not expire.</p> <p>Granting a Medical Officer of Health this power provides an opportunity for a public health risk-based approach where QFT is suspended or where these aircrew travel overseas to non-QFT places for work purposes:</p> <ul style="list-style-type: none"> • for an extended period, for example, to undertake regulatory or safety critical training • involving a multi-led flight or domestic travel, for example aircrew travelling to an international airport and then on to a local destination.

What's needed	Rationale
<p>As part of making the AirNZ isolation hotel arrangements legal on an ongoing basis, changes to the ABO are proposed that will:</p> <ul style="list-style-type: none"> allow the Director-General to designate a place of self-isolation as either a designated dwelling house or room in a designated self-isolation hotel require aircrew travelling on higher-risk routes to isolate in a "designated place of self-isolation". <p>Minister's decision: YES / NO</p>	<p>Aircrew are subject to the Isolation and Quarantine Order if they have travelled on a higher-risk route within the seven days immediately before arriving in New Zealand by air. The Isolation and Quarantine Order requires them to remain in self-isolation for 48 hours, undergo a test for COVID-19, and continue to self-isolate until a negative test is returned.</p> <p>This proposal will enable the AirNZ isolation hotel to be designated as a place of self-isolation and will provide AirNZ with a legal foundation for requiring staff to remain in the hotel. Currently, the arrangements are based on agreement made via your letter of 15 December 2020 to the AirNZ Chief Executive (CE). The AirNZ CE has asked that the arrangement are set out in an Order and officials support this. This power will also be available for use with other airlines, and in other circumstances.</p> <p>Defining a place of self-isolation as either a designated dwelling house (home) or designated hotel will provide flexibility for the future. For example, AirNZ are interested in exploring the alternative options for aircrew members where they, and all their household are fully vaccinated, and the risk of transmission of COVID-19 is low. Officials will engage with AirNZ and other stakeholders on this matter in the future.</p> <p>There are currently two designated higher-risk routes flown by AirNZ – Los Angeles and any airport in New Zealand, and San Francisco and any airport in New Zealand. We are preparing advice on whether there should be any change to the list of routes classed as 'higher-risk' (not to be confused with 'high risk countries').</p>
<p>It is proposed that the CE of the Ministry for Business, Innovation and Employment (MBIE) should be able to give direction to scheduled departers relating to their travel to and in their place of departure.</p> <p>Minister's decision: YES / NO</p>	<p>Scheduled departers are those people who leave MIQ early, to leave New Zealand. At the time of their departure, they may not have fulfilled all testing and quarantine requirements. This means their COVID-19 status may not be clear.</p> <p>The CE of MBIE has directed scheduled departers to wear personal protective equipment (PPE) and physically distance during their travel to their place of departure. The intent of this proposal is to enable the CE of MBIE to direct these departers to continue to wear PPE and physically distance in their place of departure – that is in airport and while boarding the aircraft.</p>

What's needed	Rationale
<p>It is proposed that passengers on multi-leg flights transiting New Zealand be explicitly required to wear PPE and physically distance (where practicable) during transit.</p> <p>Minister's decision <input checked="" type="checkbox"/> YES / NO</p>	<p>This "belts and braces" proposal will make it clear that any passengers travelling to New Zealand are required to wear PPE, and must physically distance where practicable. This requirement is particularly important where passengers disembark their aircraft. It will reduce the risk to passengers and to New Zealand where a multi-leg flight is turned back (for example, due to a mechanical fault).</p>
<p>Where an aircraft is turned back, or diverted to New Zealand, it is important for public health that passengers become subject to appropriate medical examination, and isolation and quarantine requirements, considering whether their flight is a:</p> <ul style="list-style-type: none"> • QFT flight • flight with passengers who were early departers from MIQ • multi-leg or transit flight, with passengers from outside New Zealand. <p>Minister's decision <input checked="" type="checkbox"/> YES / NO</p> <p>It is also proposed that passengers on aircraft that are turned back, or diverted, be exempt from the requirement to have a place booked in MIQ and evidence of a COVID-19 test.</p> <p>Minister's decision <input checked="" type="checkbox"/> YES / NO</p>	<p>The Air Border Order provides an exemption from medical examination, testing, and isolation and quarantine requirements in certain circumstances where a flight is turned back to New Zealand. As currently drafted, the clause is focussed on the individual people on the flight. It does not consider the nature of the flight which might be a flight with early departers from MIQ, or multi-leg or transit flight.</p> <p>As currently drafted, the clause enables an unacceptable public health risk. We do not want passengers to re-enter the community without a medical examination and to be automatically exempt from MIQ if they have spent hours next to an early departer or transit passenger who might have COVID-19. This was not the intent of the clause. The intent was that an exemption should be in place for those passengers who are genuinely low-risk such as those on a QFT flight.</p> <p>The proposal also recognises that where a flight is turned back or diverted to Aotearoa, the affected passengers would not be able to book a confirmed allocation ahead of time. They may also not satisfy the COVID-19 testing requirements. They will be found to be breaking the law on return to New Zealand for matters outside their control. From a practical perspective, an offline/contingency place held by MIQ facilities would be available for people in this situation.</p>

What's needed	Rationale
<p>We propose to extend QFT travel parameters to defined MFAT and Health-approved flights carrying ministerial delegations, and humanitarian and medical evacuees where they are travelling consistent with all QFT prerequisites and obligations.</p> <p>Minister's decision: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>In the process of implementing QFT travel and consulting on this paper, it was identified that there were two additional types of flights that could reasonably be made part of the QFT regime, if all the regime requirements were applied. This would reduce the need for ad hoc ministerial exemptions (such as the recent exemption granted to the Australian Foreign Minister).</p> <p>Officials will take advice on how best to draft the proposal – either as part of the QFT travel provisions in the Orders, or as an exemption linked to QFT. The drafting will make clear that all the QFT prerequisites apply to the carriers, aircrew and passengers. Arrangements will also need to be in place for MFAT to notify the Ministry in advance of these flights to ensure that any COVID-19 risk is managed appropriately.</p>

New powers for the Director-General of Health to grant exemptions

21. Table two below includes proposals to amend the Orders to provide new powers for the Director-General to grant exemptions for four new classes of people; these are two different classes of aircrew along with critical operation staff, and emergency workers. This would, in effect, remove the need for you to make an exemption decision, which in the case of aircrew and critical operations staff may become more frequent as international routes re-open.
22. The Director-General's exercise of their exemption-making power is constrained by clause 26A of the Air Border Order. In summary, an exemption must be necessary or desirable and not broader than necessary. A public health risk assessment will support the decision-making. As per the status quo, officials have discretion to request the information needed to decide an exemption request. This provides flexibility for Ministry officials to request information that is appropriate to the circumstances of the request.
23. Clause 26A enables the Director-General to impose any conditions they consider necessary. This provides flexibility for Ministry officials to recommend conditions that are appropriate to the circumstances and the risk presented by the person or persons granted an exemption. Overall, there is no risk in devolving this decision-making power to the Director-General, but a benefit would be a reduction in your workload.

Table Two: Proposed Director-General exemption making powers

Class of person	Rationale
<p>Aircrew and critical operations staff exemptions for purposes directly related to regulatory or safety management requirements.</p> <p>Minister's decision: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>The Orders generally already exempt New Zealand-domiciled aircrew members from the requirement to enter a MIQ Facility for 14 days on entry to New Zealand.</p> <p>In order to re-start routes, AirNZ and Qantas need non-domiciled aircrew and critical operations staff including service engineers, doctors, auditors and trainers to travel here and to overseas destinations for regulatory or safety management requirements as outlined in the background at paragraphs 11 – 14.</p>
<p>Specified aircrew on private and charter flights.</p> <p>Minister's decision: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>Consistent with the proposal to clarify the definition of specified aircrew member discussed in table one above, officials recommend that a provision be put in place to enable the Director-General to grant an exemption to specific aircrew on private and charter flights.</p>
<p>Persons supporting an emergency.</p> <p>Minister's decision: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p>	<p>Critical infrastructure industries have raised concerns that the current Director-General exemption power related to a state of emergency does not adequately provide for other time-critical emergencies.</p> <p>The types emergencies that would be covered by this amendment include infrastructure emergencies such as fuel pipeline bursts, oil platform leaks or critical maintenance work required to prevent potential emergencies. These may require the assistance of specialist or skilled workers outside New Zealand. They would also include natural disasters. They are captured by section 4 of the Civil Defence Emergency Management Act 2002.</p>

Amendments to Key Safety Standards

24. Table two below includes proposals to amend Isolation and Quarantine Order Key Safety Standards (the Standards). The Standards prescribe the rules for all New Zealand-domiciled aircrew (regardless of route designation) when at an overseas port.
25. The allowance for air crew to self-isolate, either at home or in the Air New Zealand-contracted hotel is contingent on their compliance with the Standards. A determination that aircrew have failed to comply will lead to MIQ for 14 days on return to New Zealand.
26. We have reviewed the Standards to determine what additional measures could be put in place to minimise the transmission of COVID-19 given the evolving global and domestic COVID-19 context. This has included considering what should happen when there is evidence that a crew member has not complied, through no fault of their own, and we consider the consequential breach to be of low risk. We have also reviewed the current higher-risk routes and are providing you with separate advice on these.

Table Three: Proposals to amend the Key Safety Standards

What's needed	Rationale
<p>We propose to move the Key Safety Standards from the Isolation and Quarantine Order to the Air Border Order.</p> <p>Minister's decision <input checked="" type="checkbox"/> YES / NO</p>	<p>Broadly speaking, the Air Border Order prescribes rules relating to behaviour before entering, and for entering, New Zealand by air (for example, the requirement for pre-departure testing). The Isolation and Quarantine Order prescribes rules once a person is in New Zealand.</p> <p>Given that the Standards relate to behaviour overseas, officials recommend they are moved from the Isolation and Quarantine Order to the Air Border Order. This will assist with clarity of the relevant rules that apply to aircrew members (and others to whom the Standards apply) by grouping similar provisions in the same order.</p>
<p>We propose to clarify that a "fellow worker" of an aircrew member is a person that works on the same aircraft as the crew member.</p> <p>Minister's decision <input checked="" type="checkbox"/> YES / NO</p>	<p>The current definition of "fellow worker" means that aircrew from the same airline who are travelling on different aircraft can mix. This is inconsistent with the public health goal of the Standards, of preventing transmission of COVID-19 by keeping crew on a single aircraft on a route in one bubble. This clarification will make the public health goal and intention of the definition clear.</p>
<p>We propose to place a general obligation on airlines to take reasonable steps to ensure that their aircrew members comply with the Standards.</p> <p>Minister's decision <input checked="" type="checkbox"/> YES / NO</p>	<p>The Orders place several obligations on airlines and they must take reasonable steps to comply with them (although they are not linked to an offence and infringement regime). These obligations are designed to support the effective operation of the borders, acknowledging that airlines play an important role in preventing COVID-19 from entering our community. This includes through transmission from one aircrew member to another aircrew member. The Standards also prevent transmission from an aircrew member to the community.</p> <p>Officials consider that a provision requiring airlines to take all reasonable steps to ensure their aircrew members comply with the Standards would be helpful to reinforcing the importance of the Standards; for aircrew and the community. It would be consistent with the range of obligations placed on airlines under the Order. It would support the need for them to make appropriate arrangements for staff that enable staff to comply with the Standards. This proposal is a companion to the proposal below.</p>

What's needed	Rationale
<p>We propose to enable a Medical Officer of Health to exempt a member of air crew from isolation and quarantine requirement, where they have:</p> <ul style="list-style-type: none"> reasonable grounds to believe that the aircrew member has failed to meet one or more of the Standards, but they are satisfied that the crew member is at low risk of having or transmitting COVID-19. <p>Minister's decision: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO</p>	<p>There are high levels of compliance with the Standards. However, as international travel resumes, there may be some circumstances where a member of aircrew may fail to comply due to no fault of their own. For example, they may have had to leave their accommodation to access food as catering arrangements were inadequate.</p> <p>This proposal will enable an appropriate and risk-based response if a low-risk breach was to occur. It would enable the aircrew member to be exempt from Part 1 and the requirements for isolation and quarantine generally. It is a companion proposal to the proposal to require airlines to take all reasonable step to support aircrew to comply with the Standards. That proposal should ensure that breaches remain exceptionally rare.</p>
<p>We need to:</p> <ul style="list-style-type: none"> clarify that while overseas, all crew members must travel only with fellow workers on dedicated or private transport, that the driver must wear PPE. and maintain physical distancing (where practicable) extend the Standards to cover aircrew who travel for a period of greater than 7 days or travel domestically overseas, requiring the person to travel directly to their accommodation or any place where they are working. <p>Minister's decision: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO</p>	<p>It was always intended that aircrew should only travel with fellow workers, using dedicated transport. This was to ensure there is no mixing with aircrew from other aircraft, airlines or with members of the public. The proposal above gives effect to this intention. It will also extend the Standards to include aircrew travel to any place of work overseas. This will ensure the Standards remain applicable and workable in a wider set of circumstances.</p>
<p>We would like the obligations on aircrew while airside referenced in the Standards to be repealed.</p> <p>Minister's decision: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO</p>	<p>We no longer rely on these clauses in the Standards as we no longer use the concepts of "airside" and "landside". As such, these clauses are no longer needed in the Standards but will remain in use in the substantive provisions of the Air Border Order.</p>

Minor and technical amendments

27. In addition to the amendments outlined above, officials recommend you agree to PCO making minor and technical amendments to the Orders. Such amendments will clarify understanding in some areas and will not involve changes in policy or intent.
28. One example of a technical amendment is that Clause 8(4) about PPE and physical distancing is clarified. It will be useful to further clarify that the requirement applies both while travelling to a place of isolation and quarantine and in the airport (whether or not the person is travelling to a place of isolation and quarantine).

Mechanism for making the proposed amendments

29. If you agree, the proposed amendments will affect the Air Border Order and Isolation and Quarantine Order issued under the COVID-19 Public Health Response Act 2020 (the Act). Under section 15(4) of the Act, to make an amendment to an Order, you must:
 - a. have had regard to advice from the Director-General of Health 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;
 - b. have had regard to any decision by the Government on the level of public health measures appropriate to respond to those risks and avoid, mitigate or remedy the effect of the outbreak or spread of COVID-19;
 - c. be satisfied that the amendment does not limit, or is a justified limit on, the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA);
 - d. have consulted the Prime Minister, the Minister of Justice and the Minister of Health, and any other Minister thought fit; and
 - e. be satisfied that the amendment is appropriate to achieve the purpose of the Act.

Justification for making the proposed amendments

Public health justifications

30. COVID-19 is a highly infectious disease which may be spread by people who are not showing symptoms. The risk presented by the virus provides the justification for taking significant measures to identify potential cases of COVID-19 and reduce the risk of any spread in New Zealand and overseas.
31. You are receiving ongoing advice about the risks associated with COVID-19. In accordance with section 9(2) of the Act, you may have regard to that advice without it being repeated in this briefing. However, any specific and relevant public health justification(s) for the proposed amendments are set out in this briefing.

Consistency with the New Zealand Bill of Rights Act 1990

32. The power to make an amendment to an Order under sections 9 and 11 of the Act must be exercised consistently with NZBORA. Officials have had regard to this obligation and our advice on the proposals that engage NZBORA rights is set out below.

33. A number of the proposals in this paper:
- a. make clarifications to, or repeal, existing provisions that do not materially change the status quo
 - b. enable exemptions to be made which, in effect, grant powers to lessen the restriction on rights for certain classes of people
 - c. do materially change the status quo and engage NZBORA rights. These are in the table at Appendix One and discussed below.
34. In undertaking our NZBORA assessment, we have considered what the Orders and the proposed amendments to them are trying to achieve – their objective. The Orders are part of a bespoke legal framework for managing the public health risks posed by COVID-19. They support the Government’s Elimination Strategy and have the purpose of preventing COVID-19 reaching and being transmitted in our community.
35. We have also considered the affected individual or individuals. The Orders reduce the risk that a person travelling to, through or from New Zealand will catch COVID-19 themselves. The restrictions being imposed on an individual have a public health focus. Their objective is to keep New Zealand and all people here safe and well through preventing illness and fatalities.
36. The NZBORA rights that are engaged are:
- a. the right to refuse medical treatment
 - b. freedom of expression
 - c. freedom of peaceful assembly
 - d. freedom of association
 - e. freedom of movement
 - f. liberty of the person (against arbitrary detention)
 - g. respect and dignity in detention.
37. In all cases, we have considered if the impact on the affected individual or individuals could be lessened, or if there were alternatives. Our summary of this, and justification for the restrictions on rights, is outlined in the table below. At a fundamental level, the primary justification is that COVID-19 is a highly contagious and unpredictable virus that has the potential for asymptomatic transmission. Without testing, and isolation and quarantine, we cannot know if a person is infected with the virus and cannot make an informed decision about the risk they present to our community.

Proposed amendment:	Possible alternative	Justification
<p>Creating a power to designate a “place of self-isolation”, to require aircrew returning from higher-risk routes to self-isolate in these places</p>	<p>These aircrew could be directed to an MIQ facility where their rights would be more restricted. They may also be at a greater risk of contracting COVID-19 from MIQ occupants that did not follow the same protocols as them during travel.</p> <p>Other alternatives would be self-isolation at home or no isolation requirements. As the crew member may have COVID-19 and be asymptomatic, this would create a risk of the spread of COVID-19 in the community.</p>	<p>This amendment creates the ability to enable alternatives to MIQ for these aircrew, including the potential to enable self-isolation at home in the future.</p> <p>An isolation hotel is a positive alternative to an MIQ facility and enables early departure with a negative test.</p> <p>Isolation is necessary as these aircrew are travelling on higher-risk routes with an increased likelihood of contracting COVID-19.</p>
<p>Creating a power to give directions to scheduled departers in a place of departure, to require them to wear PPE and physically distance</p>	<p>The status quo, where scheduled departers may remove PPE, and associate with others, within an airport, potentially spreading or contracting COVID-19.</p>	<p>The COVID-19 status of the affected individual is not fully known at their time of departure. They may be contagious and a risk to others in the airport environment.</p>
<p>Requiring passengers on multi-leg journeys to wear PPE while travelling in Aotearoa</p>	<p>The status quo, where there is no clear obligation on passengers who may potentially spread COVID-19 to aircrew or those joining their flight in New Zealand.</p>	<p>The COVID-19 status of passengers on multi-leg flights is not known at their time of departure. They may be contagious and a risk to others during the time they transit here.</p>
<p>Providing that passengers on flights turned back or diverted to Aotearoa can be subject to medical examination, and isolation or quarantine</p>	<p>These passengers would have existing restrictions apply, and not all would be subject to a medical examination and risk-based isolation or quarantine obligations (if required). This would create a risk of the spread of COVID-19 in the community.</p>	<p>This amendment requires a medical examination which, in turn, supports a risk-based decision about the appropriate restrictions that should be applied to an individual (if any). They may be contagious and spread COVID-19.</p>
<p>Applying the Standards to aircrew travelling longer than seven days or domestically outside Aotearoa</p>	<p>There is no viable alternative, as this proposal is linked to a proposal that will enable the lessening of restrictions. If the Standards were not applied, the restrictions could not be lessened.</p>	<p>This proposal is linked to an ability to make a risk-based decision about the isolation or quarantine obligations (if required) an aircrew member would be subject to, providing the potential to lessen the restriction.</p>

Consultation with Ministers

38. Prior to making an Order under section 11 and 15 of the Act, you are required to consult with the Prime Minister, the Minister of Justice and the Minister of Health, and any other Ministers you see fit.

39. Subject to your agreement, officials will further consult with key government agencies on the draft amendments, and then provide you with a further briefing detailing the amendments for your further consideration and Ministerial consultation.

Consultation and engagement on these proposals

40. Officials have consulted with the Treasury, Ministry of Foreign Affairs and Trade, Ministry of Justice, New Zealand Customs Services, MBIE and the Ministry of Transport on these proposals. Officials have also engaged with AirNZ, Qantas, the Board of Airline Representatives New Zealand and airports. Feedback has been incorporated into the paper as appropriate and there is broad support for the proposals.

Implementation

41. The Ministry will continue to work with government agencies, AirNZ, Qantas and other relevant stakeholders to ensure that any agreed amendments are implemented, and air and MIQ requirements are continuing to be complied with.

Guidance

42. The Ministry will develop relevant guidance to support the implementation of any agreed amendments to the Orders. This guidance will be developed in consultation with relevant agencies and industry stakeholders to ensure that it is useful from an operational perspective, and likely to be complied with.

Next steps

43. Subject to your agreement, the Ministry will issue drafting instructions to PCO to make amendments to the Orders to give effect to the proposed requirements, which will be provided to you for consideration and Ministerial consultation.
44. Officials will continue to work with key stakeholders to identify improvements to the Orders and ensure their consistency with our Elimination Strategy. The improvement process is constant. It will result in further advice on the Order being consulted on, and provided to you, in the future.

ENDS.

Appendix One: Table of NZBORA rights engaged

This table has been colour-coded to provide a visual representation of the significance of the impact on the rights of the affected person. The cells color-coded **green** represent least restrictive proposals, where rights are only limited for short periods of time and in single instances. Those coded **red** are the most restrictive. In the case of aircrew, officials note that their rights are restricted over longer periods and on a more frequent basis which has an overall higher impact on their liberty. This has been considered in the coding. Overall, the prevalence of COVID-19 globally necessitates a strong and continued public health response in New Zealand. This has provided the foundation for our analysis that has found that the limitations on the rights and freedoms in the NZBORA are justified.

	Rights engaged:						
Proposed amendment:	To refuse medical treatment	Freedom of expression	Freedom of peaceful assembly	Freedom of association	Freedom of movement	Liberty (against arbitrary detention)	Respect and dignity in detention
Creating a power to designate a "place of self-isolation", to require aircrew returning from higher-risk routes to self-isolate in these places		Limits how, and where, this right can be exercised to the place of self-isolation, which occurs frequently for some aircrew	Limits the ability to gather in groups as requires self-isolation until a negative test (generally 2-3days) which occurs frequently for some aircrew	Limits the ability to gather with others as requires self-isolation until a negative test (generally 2-3 days), which occurs frequently for some aircrew	Will restrict movement of person to their place of self-isolation until a negative test (generally 2-3 days), which occurs frequently for some aircrew	There is a legal, public health, and personal health and wellbeing foundation for the requirement to isolate, with the minimum reasonable amount of restriction	The best available facilities are used, and all relevant law regarding safety and wellbeing are applicable
Creating a power to give directions to scheduled departers in a place of departure, to require them to wear PPE and physically distance		Limits how, and where, this right can be exercised in a single circumstance for a short time	Limits the ability to gather in groups in a single circumstance for a short time	Limits the ability to gather with others as requires physical distancing in a single circumstance for a short time			

	Rights engaged:						
Proposed amendment:	To refuse medical treatment	Freedom of expression	Freedom of peaceful assembly	Freedom of association	Freedom of movement	Liberty (against arbitrary detention)	Respect and dignity in detention
Requiring passengers on multi-leg journeys to wear PPE while travelling in Aotearoa		Limits how, and where, this right can be exercised in a single circumstance for their flight					
Providing that passengers on flights turned back or diverted to Aotearoa can be subject to medical examination, and isolation or quarantine	Will require a medical examination for symptoms of COVID-19 (and if refused will result in mandatory quarantine meaning refusal will result in the restriction of other rights)	Limits how, and where, this right can be exercised to by requiring PPE within airport, and during travel to and stay in MIQ (if required)	Limits the ability to gather in groups as requires self-isolation within the airport, and during travel to, and stay in, MIQ if required. MIQ may be for a period (of up to 28 days if testing refused)	Limits the ability to gather with others within airport, and during travel to, and stay in, MIQ if required. MIQ may be for a (of up to 28 days if testing refused)	May restrict movement of person if MIQ is required. MIQ may be for a period (of up to 28 days)	There is a legal, public health, and personal health and wellbeing foundation for the requirement to isolate, with the minimum reasonable amount of restriction	The best available facilities are used, and all relevant law regarding safety and wellbeing are applicable

PROACTIVELY RELEASED

	Rights engaged:						
Proposed amendment:	To refuse medical treatment	Freedom of expression	Freedom of peaceful assembly	Freedom of association	Freedom of movement	Liberty (against arbitrary detention)	Respect and dignity in detention
Applying the Standards to aircrew travelling longer than seven days or domestically outside Aotearoa		Limits how, and where, this right can be exercised as requires PPE when not in own room	Limits the ability to gather in groups as requires person to engage with as few others as possible and physically distance	Limits the ability to gather with others as requires person engage with as few others as possible and physically distance	Will restrict movement of person to their place of accommodation, training and work	There is a legal, public health, and personal health and wellbeing foundation for the requirement to isolate, with the minimum reasonable amount of restriction	The best available facilities are used, and all relevant law regarding safety and wellbeing are applicable

PROACTIVELY RELEASED