

Briefing

Exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 to enable one-way quarantine-free travel from Niue

Date due to MO:	9 March 2021	Action required by:	15 March 2021
Security level:	IN CONFIDENCE	Health Report number:	20210415
To:	Hon Chris Hipkins, Minister for COVID-19 Response		
Copy to:	Hon Andrew Little, Minister of Health		

Contact for telephone discussion

Name	Position	Telephone
Dr Ashley Bloomfield	Director-General of Health	s 9(2)(a)
Maree Roberts	Deputy Director-General of Health, 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 Withdrawn | |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:

Exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 to enable one-way quarantine-free travel from Niue

Security level: IN CONFIDENCE **Date:** 9 March 2021

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

Purpose of report

1. This briefing recommends that you grant an exemption from clauses 8(2A), 8(3), 8(3A) and 8(4) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (the Order) until 30 April 2021 to enable one-way quarantine-free travel (QFT) from Niue to New Zealand.

Summary

2. On 7 December 2020, Cabinet approved signature of the Arrangement to Facilitate Quarantine-Free Travel between New Zealand and Niue (the Arrangement) to facilitate QFT with Niue. Two-way QFT with Niue will commence later in 2021 subject to the outcome of a review of the readiness of its health system [CAB-20-MIN-0515].
3. As an interim measure, Niue has raised the idea of one-way QFT. In March 2021, after noting that officials consider that health and operational readiness for one-way QFT from Niue to New Zealand had been met, Cabinet agreed that one-way QFT can commence from 19 March 2021 [SWC-21-MIN-0014].
4. The Order will need to be amended to exempt passengers arriving in New Zealand from Niue from quarantine requirements. The process for amending this Order is underway but will not be completed until 31 March 2021. To enable one-way QFT from Niue to occur in the interim, an exemption to the Order is being sought.
5. Under clause 26 of the Order, you may exempt any person or class of persons from the requirement to comply with any provision of the Order if you are satisfied that:
 - a. the exemption is necessary and desirable to promote the purposes of the COVID-19 Public Health Response Act 2020 (the Act) or the Order; and
 - b. the extent of the exemption is not broader than is reasonably necessary to address the matters giving rise to the exemption.
6. When deciding whether to grant the exemption and what (if any) conditions to impose, you are required to take into account my advice on the public health implications.

7. My advice is that the exemption meets the purpose of the Act, as granting the exemption poses a low risk of contributing to the outbreak or spread of COVID-19 in New Zealand. There remains no evidence of COVID-19 in Niue and Niue has committed to maintaining current health and border measures to ensure that COVID-19 does not enter the country.
8. We have provided separate advice regarding changes to the Order to exempt persons travelling from partner countries from quarantine requirements. Given these amendments will not be ready until 31 March 2021, I recommend that the exemption apply to passengers travelling from Niue until 30 April 2021 to ensure a smooth transition between the exemption and the amendment coming into force.

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 when deciding whether to grant an exemption you must take into account my advice as the Director-General of Health and what, if any, conditions to impose on an exemption. **Yes / No**
- c) **Note** that to enable one-way quarantine-free air travel from Niue an exemption needs to be granted that exempts passengers from having to undertake 14 days of managed isolation when they arrive in New Zealand. **Yes / No**
- d) **Note** that I consider there is very low risk that granting this exemption will contribute to the outbreak or spread of COVID-19 in New Zealand. **Noted** ✓
- e) **Note** that this exemption is required while further work is being undertaken on amendments to the Order. **Noted** ✓
- f) **Sign** the attached Exemption Notice which grants an exemption from clauses 8(2), 8(2A), 8(3), 8(3A) and 8(4) of the Order to passengers travelling by air from Niue to New Zealand. **Noted** ✓



Dr Ashley Bloomfield
Director-General of Health

Date:



Hon Chris Hipkins
Minister for COVID-19 Response

Date: 11/3/2021

Exemption from the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 to enable one-way quarantine-free travel from Niue

Background

9. In June 2020, Cabinet agreed an approach to, and general principles for, quarantine-free travel (QFT) [CAB-20-MIN-0278] and subsequently agreed that officials should move forward to establish one-way QFT from Niue to New Zealand.
10. The objective of QFT is to enable people to move freely between partner countries without having to quarantine on arrival, in a way that:
 - a. provides confidence to governments and people that travelling will be safe;
 - b. ensures public health requirements are met;
 - c. ensures people travelling to New Zealand do not have, or are unlikely to have, COVID-19;
 - d. is practically workable at the border; and
 - e. is commercially viable and operationally workable for airlines and airports.
11. On 7 December 2020, Cabinet agreed to sign the *Arrangement between the Government of New Zealand and the Government of Niue to facilitate quarantine-free travel* (the Arrangement). Cabinet noted that the Arrangement aligned with the principles for QFT, and that officials would undertake necessary technical assessments and readiness work to commence QFT [CAB-20-MIN-0515].
12. Cabinet noted that Niue had indicated that it would not be pursuing two-way QFT until 2021 but had raised the idea of one-way QFT as an interim measure [CAB-20-MIN-0515].
13. Officials consider that the health conditions and necessary systems are in place to operationalise QFT from Niue and, in March 2021, Cabinet agreed that one-way QFT can commence from 19 March 2021 [SWC-21-MIN-0014]. However, to facilitate one-way QFT, the Air Border Order (the Order) needs to be amended. The process for amending the Order is underway but is not likely to be completed until 31 March 2021. Speeding up the drafting process is not recommended as it may result in unintended consequences.

Details of the exemption

14. To enable interim one-way quarantine-free travel from Niue to New Zealand, passengers need to be exempted from clauses 8(2), 8(2A), 8(3), 8(3A), and 8(4) of the Order. The exemption would only apply to passengers who are travelling by commercial aircraft to New Zealand directly from Niue who meet the following criteria:
 - a. they have been in Niue and/or New Zealand for at least 14 consecutive days immediately prior to departure to New Zealand; and

- b. there are no reasonable grounds to suspect that they have COVID-19.
15. Requiring passengers to have spent a minimum of 14 consecutive days immediately prior to arrival in Auckland either in Niue and/or New Zealand would prevent passengers from circumventing the QFT eligibility criteria. It will ensure that passengers have only been in Niue or New Zealand within the immediately preceding 14 days prior to departure. For example, a New Zealand citizen who has been in New Zealand for the last 14 days is captaining a Niuean fishing vessel (which has been in New Zealand for refurbishment and refitting) to Niue. The captain captains the vessel from New Zealand to Niue, goes straight from the vessel to the airport at Alofi, and is able to return to Auckland without entering MIQF.
16. This exemption will not affect the public health measures implemented by Niue. Currently, entry to Niue is restricted to residents and essential service people only (with a letter from the Niuean Government stating that they have the right to enter Niue) and all arrivals must quarantine for 14 days on arrival. Flights currently arrive in Alofi from Auckland on a fortnightly basis.
17. Passengers arriving from Niue would not be exempt from the other health measures contained in the Order such as the requirement to report for and undergo medical examination upon arrival. Passengers arriving from Niue will also be required to wear masks while at the airport and to maintain physical distancing from other persons at the airport who were not on their flight from Niue. Air New Zealand has advised officials that it will continue to require passengers travelling from Niue to wear masks while on board the aircraft as a condition of carriage.
18. If there were an outbreak of COVID-19 in Niue, the Minister would be able to issue a notice revoking the exemption from the Order, if this were considered necessary.
19. These measures will help ensure one-way QFT from Niue to New Zealand is as low risk as practicable.

Statutory power to grant an exemption

20. 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 Act or the Order; and
 - b. the extent of the exemption is not broader than is reasonably necessary to address the matters giving rise to the exemption.
21. 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.

Purpose of the Act and the Order - preventing the spread of COVID-19

22. 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);

- b. avoids, mitigates, or remedies the actual or potential adverse effects of the COVID-19 outbreak (whether direct or indirect);
 - c. allows social, economic and other factors to be taken into account where it is relevant to do so;
 - d. is economically sustainable and allows for recovery of Managed Isolation or 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.
23. The purpose of the Order is to 'prevent and limit the risk of, the outbreak or spread of COVID-19 by imposing certain requirements on persons arriving in New Zealand by air (including medical examination and testing for COVID-19, and commencement of isolation or quarantining, as soon as practicable after arriving in New Zealand).'
24. The risk of spreading COVID-19 to the community is evaluated considering:
- 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.
25. I consider that this exemption is very unlikely to create a significant risk of spreading COVID-19 to the New Zealand community as qualifying passengers:
- a. are at a low risk of contracting COVID-19; and
 - b. will be subject to conditions on arrival in New Zealand that will provide additional assurance.
26. Niue is currently free from COVID-19 and has committed to maintaining health and border measures to ensure that COVID-19 does not enter the country.

Promotion of other purposes under the Act

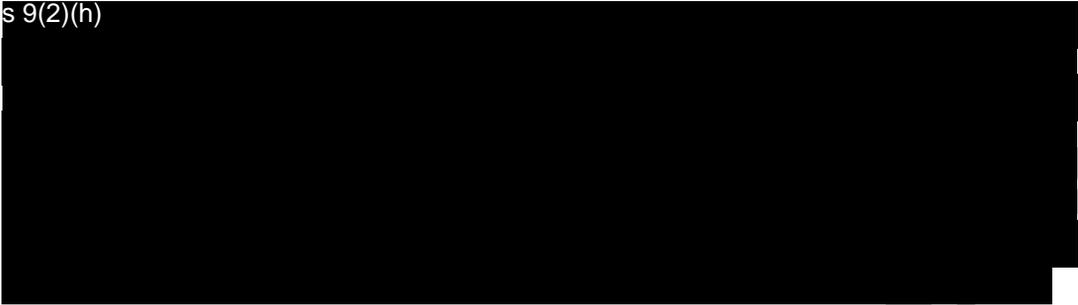
27. Other purposes under the Act may also be relevant when you are considering an exemption request. For instance, section 4(ca) allows social, economic, and other factors to be considered where it is relevant to do so.
28. Niue has close ties to New Zealand as it is part of the Realm of New Zealand and it relies heavily on New Zealand systems, infrastructure and resources. For example, Niue relies on New Zealand's secondary and tertiary healthcare services (for example, cancer treatment and dialysis), and the requirement to undergo 14-days in MIQF is a barrier to Niueans accessing these essential services.

Other factors to be taken into consideration

29. The exemption discretion must be exercised consistently with the New Zealand Bill of Rights Act 1990 (NZBORA).

30. The discretion to grant exemptions should be viewed considering the restrictions imposed on other arrivals to New Zealand under the COVID-19 Public Health (Isolation and Quarantine) Order 2020. If the exemption power is not exercised in line with the purpose of the Act this could have the effect of making MIQF requirements imposed on other persons appear arbitrary and not proportionate to the public health risk.

31. s 9(2)(h)



Next steps

32. If you sign the attached Exemption Notice, the exemption will come into effect on a date that you specify and apply to passengers travelling by commercial aircraft from Niue directly to New Zealand until 30 April 2021. The Ministry of Health will ensure that relevant agencies are advised that the Exemption Notice has been signed and the date of its commencement.

33. The Ministry of Health is continuing to work on the amendments to the Order [HR 20202048 refers] which will provide a longer-term solution to enable passengers arriving in New Zealand from designated partner countries to be exempted from quarantine requirements.

ENDS.

Gazette notice

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

1. Pursuant to clause 26 of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 ("Order"), I, Hon Chris Hipkins, Minister for COVID-19 Response, having taken into account the advice of the Director-General of Health, hereby declare that persons:
 - a. arriving in New Zealand as a passenger on an Airbus A320 or A321 aircraft operated by Air New Zealand Limited;
 - b. who have travelled directly from Niue to New Zealand; and
 - c. who satisfy the quarantine-free entry criteria as defined in clause 2

are exempt from clauses 8(2), 8(2A), 8(3), 8(3A) and 8(4) of the Order.

2. The *quarantine-free entry criteria* are that:
 - the person has been only in Niue and/or New Zealand for at least 14 consecutive days immediately prior to departure to New Zealand;
 - they have maintained physical distancing (to the greatest extent practicable) from any person, at the airport at which they arrive, who did not arrive from Niue;
 - they have worn a face covering while in the airport at which they arrived in New Zealand; and
 - on arrival into New Zealand, there are no reasonable grounds (as determined by a suitably qualified health practitioner) to suspect that the person may have COVID-19.
3. For the purpose of this exemption, **face covering** means a covering of any type that covers the nose and mouth of a person.
4. For the purpose of this exemption, **physical distancing** from other persons, means remaining at least 2 metres away from them.

This exemption will commence at 11:59pm on 18 March 2021. This exemption expires at 11.59pm on 30 April 2021.

Dated at Wellington this 11th day of March 2021



Hon Chris Hipkins
Minister for COVID-19 Response