



Briefing

ALERT LEVEL REQUIREMENTS AMENDMENT ORDER FOR SIGNING

To Minister for COVID-19 Response (Hon Chris Hipkins)			
Date	14/09/2021	Priority	URGENT
Deadline	14/09/2021	Briefing Number	DPMC-2021/22-340

Purpose


Attached to this briefing is the proposed COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) Amendment Order (No 3) 2021, which we recommend that you sign. This order makes various amendments to the current Alert Level 2 and 4 settings.


This briefing summarises the effect of the amendments and confirms that the necessary procedural requirements for the making of COVID-19 Orders have been complied with.

Recommendations

- Note** that this brief provides a summary of the key provisions of the proposed Order.
- Note** that the necessary procedural requirements for the making of COVID-19 Orders have been complied with.
- Sign** the COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) Amendment Order (No 3) 2021 (Attachment A).

YES/NO


 Ben White
 Manager, Strategy and Policy
 COVID-19 Group, DPMC
 14.09.21


 Hon Chris Hipkins
 Minister for COVID-9 Response
 15/9/21

IN CONFIDENCE

Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Ben White	Manager, Strategy and Policy, COVID-19 Group, DPMC	s9(2)(a)	
Jess Gorman	Principal Solicitor, DPMC	s9(2)(a)	✓

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

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Summary of the amendments

Clarifying the rules with regard to venue hire and social gatherings at Alert Level 2

1. There is some ambiguity in the current Order about whether a gathering held in a food and drink business hired exclusively for the purposes of the gathering needs to apply the rules that relate to social gatherings or the rules that apply to a food and drink business. This would apply, for example, to a wedding reception held a restaurant, where the whole space is booked for that purpose.
2. The Amendment Order removes this ambiguity by specifying that exclusive hire of a venue constitutes a social gathering. It remains a requirement for workers at social gatherings to wear face coverings in line with the rules that would apply in comparable hospitality settings. The Amendment Order makes it an infringement offence to fail to comply with this requirement.

Clarifying the rules about multiple activities occurring at the same venue at Alert Level 2

3. There is currently a degree of uncertainty about the settings that apply to a business, service or facility with an on-licence or a club licence that hosts more than one type of activity. An example of this is a bar that also includes a class four gaming room (i.e. poker machines) and/or a pool room.
4. The Amendment Order addresses this by:
 - a) specifying that people are able to play at gambling machines within licensed venues provided that food and drink is not served or consumed at those machines, that the 1-metre physical distancing rule applies and that face coverings must be worn; and
 - b) clarifying that the rules for food and drink businesses apply with respect of all people in such venues regardless of whether they are eating or drinking, e.g. this confirms dance floors or pool tables could not operate in the premises.

Clarifying the scope of businesses that can occur in-home at Alert Level 4

5. The schedule that relates to the type of businesses that are able to occur in a person's home at Alert Level 4 can presently be read to be much narrower than intended, preventing necessary services being able to be provided to people that may require them.
6. The Amendment Order specifies with greater clarity the types of business and services that may occur in-home by specifying that the following can occur in-home:
 - a) building, construction, and maintenance services required to address immediate risks to health and safety.
 - b) utility services relating to the installation and maintenance of the following, required to address immediate risks to health and safety:

IN CONFIDENCE

- i) electricity;
 - ii) gas;
 - iii) water;
 - iv) waste water (e.g. sanitation);
 - v) waste;
 - vi) liquid or solid fuel; and
- c) security services (including locksmiths); and
 - d) services for deceased persons and tūpāpaku

Removing the exemption from the face coverings requirement for Cook Strait ferries at Alert Level 2

- 7. We have liaised with the Ministry of Health and the Ministry of Transport (which has also liaised with the relevant carriers) and determined that it is no longer appropriate for the Alert Level 2 settings to exempt Cook Strait ferries from the requirement to wear face coverings on public transport.
- 8. The Amendment Order removes this exemption.

Requiring face coverings in veterinary clinics

- 9. Currently, the settings do not require that face coverings are worn in veterinary clinics. We have worked with the Ministry for Primary Industries (which has consulted with the industry) and determined that it would be appropriate to extend the requirement to these settings.
- 10. The Amendment Order therefore extends the face coverings requirement to these settings.

Ensure that shared caregiving can only occur in accordance with the shared caregiving permission (rather than separately in accordance with a court order)

- 11. Currently, the Alert Level settings do not specifically allow for travel across the Alert Level boundary to occur for the purpose of shared parenting. However, it does allow for cross-boundary travel where travel is required for a person to leave or change their home or place of residence as required by a court order. The Ministry of Justice has highlighted that, since some parenting arrangements are determined pursuant to court orders, there is an argument that some travel can occur in this situation.
- 12. The Amendment Order specifies that the permission to travel home across the boundary pursuant to a court order does not include parenting orders, interim parenting orders and orders to settle disputes between guardians.

Procedural requirements for a COVID-19 Order

13. This proposed Order amends a COVID-19 Order, which you can do pursuant to sections 11 and 15 of the COVID-19 Public Health Response Act 2020 (The Act). The Act imposes certain requirements for the form, publication and making of COVID-19 Orders. You must be sure that these requirements have been complied with before making a COVID-19 Order.

48-hour notification period

14. The Act requires that a COVID-19 Order must be published and gazetted at least 48 hours before it comes into force. However, this notice period is not required to be observed where you are satisfied that the Order should come into force urgently to prevent or contain the outbreak or spread of COVID-19 or where the effect of the Order is only to remove or reduce requirements imposed by a COVID-19 Order.
15. The amendments relating to face coverings for Cook Strait ferries and veterinary clinics are additional restrictions from the existing settings. In these cases, we consider that the settings that are required to prevent or contain the outbreak or spread of the virus are required to be implemented urgently in order to have their desired effect. Accordingly, we consider that the 48-hour notification period is not required in respect of those changes.
16. The remainder of the amendments only clarify or relax the existing settings. Accordingly, we consider the 48-hour notification period is not required in respect of those changes.

Ministerial consultation

17. The Act requires that before making a COVID-19 order, you must consult with the Prime Minister, the Minister of Justice and the Minister of Health. You may also consult with any other Minister you think fit.
18. A summary of the proposed amendments was sent to your office on the evening of 13 September. Your office undertook the required Ministerial consultation and we understand no feedback was received.

Public health advice

19. The Act requires that before making a COVID-19 order, you must 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 (whether voluntary or enforceable) that are appropriate to address those risks.
20. We have consulted with the Ministry of Health, which has confirmed that these amendments align with the Director-General of Health's advice to Ministers about the appropriate settings for Alert Levels 2 and 4. Accordingly, this requirement has been complied with.

New Zealand Bill of Rights Act 1990 – subject to legal privilege

21. In addition to the specified requirements from the Act, a further matter for you to consider each time a COVID-19 order is proposed is whether the exercise of your power to do so is appropriate in the circumstances. In particular, the power to make an order under section 11 of the Act must be exercised consistently with the New Zealand Bill of Rights Act 1990 (NZBORA).

22. s9(2)(h)



Attachments:	
Attachment A:	COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) Amendment Order (No 3) 2021 (Signature Copy)