



# Briefing

## ALERT LEVEL REQUIREMENTS AMENDMENT ORDER FOR SIGNING

To Minister for COVID-19 Response (Hon Chris Hipkins)			
Date	10/09/2021	Priority	URGENT
Deadline	10/09/2021	Briefing Number	DPMC-2021/22-326


### Purpose

Attached to this briefing is the proposed COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) Amendment Order (No 2) 2021, which we recommend that you sign. This Amendment Order removes the ability for individuals to cross the Alert Level boundary for the purposes of accessing shared bubble arrangements. Some further minor amendments to the extant Alert Level 2 and 4 settings are proposed for the purposes of clarity and consistency. 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 10) Amendment Order (No 2) 2021  
(Attachment A)

YES / NO

 Ben White Manager, Strategy & Policy Group COVID-19 Group, DPMC
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Hon Chris Hipkins Minister for COVID-9 Response
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Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Ben White	Manager, Strategy & Policy Group	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- Withdrawn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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# ALERT LEVEL REQUIREMENTS AMENDMENT ORDER FOR SIGNING

## Summary of the Amendments

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### *Removing the ability to cross the Alert Level boundary to access shared bubble arrangements*

1. Moving between Alert Level areas is presently permitted for the purpose of accessing shared bubble arrangements that households have formed for the purpose of shared caregiving arrangements of children, or for the purpose of connecting with vulnerable people that live alone.
2. The Ministry of Justice has advised, with regard to shared caregiving arrangements, that it is not practical to require the people in the Alert Level 2 area to be part of a shared bubble arrangement (which requires two households to agree that they will isolate as if they were a single household), given that there are not any stay-at-home requirements for people in the Alert Level 2 area. The same issue arises with regard to shared bubble arrangements for vulnerable people.
3. The Ministry of Health has advised that, since it would be untenable to have cross-boundary shared bubbles, it would be safer not to permit travel across the Alert Level 4/2 boundary for the purposes of accessing shared parenting.
4. Accordingly, the Amendment Order removes the ability to move across a boundary for this purpose.

### *Allowing for transit through the Alert Level 4 area for the purposes of shared parenting*

5. The Amendment Order creates a permission for people to transit through the Alert Level 4 area for the purposes of shared caregiving arrangements. This amendment means people in Northland can access shared caregiving arrangements in other parts of New Zealand that are at Alert Level 2.

### *Not all workers permitted to cross the Alert Level boundary and are subject to the testing requirement have an employer*

6. Workers permitted to cross the Alert Level boundary are required to carry evidence of having had a COVID-19 test that has been facilitated by their employer. The phrase "as facilitated by their employer" in this clause may be confusing for individuals that do not have employers (e.g. self-employed people and the judiciary). The Amendment Order revises this provision to read: "as facilitated by their employer (if any)".

### *Requiring delivery drivers in AL4 areas to wear masks when delivering to homes*

7. This Amendment Order adds a requirement for delivery drivers delivering to a house in the Alert Level 4 area to wear a face covering for any part of a trip during which they are not in or on the vehicle.

### *Clarifying the face covering requirements*

8. The Amendment Order clarifies that the requirement to wear a face covering in businesses that are able to open at Alert Level 4 is limited to the parts of the premises that are open to

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the public. For example, while they may be required in the aisles of a supermarket, they are not mandated for workers in back offices and storerooms.

9. Additionally, the amendment order creates a requirement for workers at social gatherings in Alert Level 2 to wear face coverings. This will apply to, for example, servers working at a wedding.

### **Procedural Requirements for a COVID-19 Order**

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10. This proposed Order amends a COVID-19 Order. You are empowered to make such an amendment 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*

11. 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.
12. In this instance, two of the proposed amendments create additional restrictions: removing the ability to cross the Alert Level boundary to access shared bubble arrangements and requiring delivery drivers in Alert Level 4 areas to wear masks when delivering to homes. We consider that in order for these amendments to be effective measures to limit the spread of COVID-19, they should be applied urgently.
13. Other amendments only relax or clarify existing settings. Accordingly, we consider that the 48-hour notice period need not be observed.

#### *Ministerial Consultation*

14. 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.
15. Your office has undertaken the required consultation. No feedback has been received. Accordingly, this requirement has been complied with.

#### *Public Health Advice*

16. 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.
17. 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 current settings for Alert Levels 3 and 4. Accordingly, this requirement has been complied with.

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*New Zealand Bill of Rights Act 1990*

18. 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).

19. s9(2)(h)



Attachments:	
Attachment A:	COVID-19 Public Health Response (Alert Level Requirements) Order (No 10) Amendment Order 2021 (No 2) (Signature Copy)

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