

Provided by email from Jessica Gorman, Principal Solicitor, DPMC to Minister Hipkins' Office
[Monday, 23 August 2021 6:57 pm]

Hi Erin and Morehu,

As discussed, could you please ensure that the following is provided to the Minister together with this evening's Amendment Order. The order will be provided to you directly from PCO soon.

High Level Summary of the Amendment Order

Ensure able to return home after completing essential personal movement

A clarifying amendment is made to clause 16 to ensure that people can return to their home after essential personal movement (eg visiting the supermarket).

Attending a judicial institution

The permission to attend a judicial institution is amended to ensure that people are only permitted to leave home to attend an institution when they are required or permitted to attend by that institution.

Food and beverage sales at dairies and petrol stations

The conditions on these businesses operating at Alert Level 4 are amended to ensure that they cannot sell or offer food and beverage that requires preparation or packaging after ordering (eg hot coffee).

Licensing trusts

An amendment is made to the reference to licensing trusts to ensure that only those in the areas where licensing trusts have a monopoly (in Invercargill, Matarua, Portage and Waitakere) can operate.

Businesses and services necessary to the Alert Level 4 services

An amendment is made to ensure that only those businesses and services necessary during the time that we are at Alert Level 4 can operate by having staff on premises.

48 Hour Notification Period

The COVID-19 Public Health Response Act 2020 (the Act) requires that a COVID-19 order must be published a gazetted at least 48 hours before it comes into force. However, this notice period is not required to be observed where the Minister is 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.

In this instance, amendments to the order either clarify existing settings, are a reduction of otherwise applicable requirements, or are urgently required in order to deal with the outbreak. Accordingly, we consider that the 48-hour notice period need not be observed in this case.

Consultation

The Act requires that before making a COVID-19 order, you consult with the Prime Minister, the Minister of Justice, and the Minister of Health.

Your office kindly facilitated consultation with the relevant Ministers' offices on the basis of a summary of the amendments earlier today. Accordingly, this requirement has been complied with.

Public Health Advice

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. You are not required to receive specific advice from the Director-General about the content of a proposed order or proposal to amend, extend or revoke an order.

These amendments are consistent with public health advice that has been provided previously or otherwise clarify the settings upon which public health advice has already been given. The Ministry of Health has reviewed the specific proposals and has no concerns. Accordingly, we advise that you have received sufficient advice on these matters so as to be able to have regard to the Director General's advice on Alert Level four settings generally, as required.

New Zealand Bill of Rights Act 1990

A matter for you to consider each time an order is proposed is whether the exercise of such powers will be appropriate. 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).

s9(2)(h)

