



Briefing: PROTECTION FRAMEWORK AMENDMENT ORDER FOR SIGNING – COVID- 19 PUBLIC HEALTH RESPONSE (PROTECTION FRAMEWORK AND VACCINATIONS) AMENDMENT ORDER 2022

Date:	31 March 2020	Report No:	DPMC-2021/22-1850
		Security Level:	[IN CONFIDENCE]
		Priority level	[URGENT]

	Action sought	Deadline
Minister for COVID-19 Response (Hon Chris Hipkins)	agree/disagree to recs	31/03/22

Name	Position	
Kay Baxter	Manager, Strategy and Policy, COVID-19 Group, DPMC	s9(2)(a)
Beth Hampton	Senior Policy Analyst, Strategy and Policy, COVID-19 Group, DPMC	s9(2)(a)

Minister's Office

Status:

Signed

Withdrawn

Comment for agency

Attachments: **Yes**

Briefing

PROTECTION FRAMEWORK AMENDMENT ORDER FOR SIGNING – COVID-19 PUBLIC HEALTH RESPONSE (PROTECTION FRAMEWORK AND VACCINATIONS) AMENDMENT ORDER 2022

To: Minister for COVID-19 Response (Hon Chris Hipkins)			
Date	31/03/2022	Security Level	[IN-CONFIDENCE]

Purpose

1. Attached to this briefing is the proposed COVID-19 Public Health Response (Protection Framework and Vaccinations) Amendment Order 2022, which we recommend that you sign. This order brings into effect the second stage of 'post-peak' changes to the COVID-19 Protection Framework Order, including changes to remove COVID-19 Vaccination Certificate (CVC) requirements from the COVID-19 Protection Framework (although the underlying architecture to support the use of CVCs would remain), and to reinstate amended versions of the Orange and Green levels. It also provides for the removal of vaccination mandates relating to education services and the settings where CVCs may be required.
2. 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

We recommend you:

1. **note** that this brief provides a summary of the key provisions of the proposed order
2. **note** that the requirements for the making of COVID-19 Orders have been complied with, in particular the consideration of:
 - 2.1 purpose of the COVID-19 Public Health Response Act 2020
 - 2.2 purpose of the amendment
 - 2.3 public health advice
 - 2.4 New Zealand Bill of Rights Act 1990


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2.5 Ministerial consultation

2.6 the 48-hour notification period

3. **sign** the COVID-19 Public Health Response (Protection Framework and Vaccinations) Amendment Order 2022 (Attachment A)

YES / NO


Kay Baxter Policy Manager COVID-19 Group, DPMC
31/03/2022


Hon Chris Hipkins Minister for COVID-9 Response
01 / 04 / 2022

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Summary of the Amendments

Stage two of post peak changes to the settings of the COVID-19 Protection Framework

1. This Amendment Order introduces stage two changes to the COVID-19 Protection Framework (the Framework) settings, in line with decisions made by Cabinet on Monday 21 March [CAB-22-MIN-0086 refers]. These changes are informed by the Cabinet directed reviews of the Framework and My Vaccine Pass [CAB-21-MIN-0438 and 0497 refer], and advice provided by the Strategic Public Health Advisory Group. The changes take into account the differing characteristics of Omicron compared to Delta, New Zealand's high vaccination rates, and the principle that restrictions should be removed unless they are justified and proportionate.

CVC and Vaccination requirements removed

2. The Amendment Order makes the following changes that will apply across all levels of the Framework:
 - a) Removes CVC requirements from the COVID-19 Protection Framework. This means that capacity limits at Red will now align across vaccinated and unvaccinated settings (i.e. the capacity limit is now the same regardless of whether attendees are vaccinated – i.e. up to 200 people based on 1-metre physical distancing indoors, and no limit outdoors); and
 - b) Removes workplace vaccination requirements in the COVID-19 Public Health Response (Vaccinations) Order 2021 for:
 - i) workers of premises where CVCs were formerly required (including workers at food and drink businesses, close-proximity businesses, events and tertiary education at Red); and
 - ii) early childhood and schooling education workers.

Changes at Orange and Green

3. Stage One amendments revoked the Orange and Green schedules from the COVID-19 Public Health Response (Protection Framework) Order 2021. The Amendment Order replaces these revoked schedules with the following revised requirements:

Orange

- a) Requires that the face mask settings that previously applied at Orange indoors continue to apply;
- b) Requires that workers required to wear medical-grade face masks at Red are now required to wear them at Orange, namely workers at food and drink businesses, close-proximity businesses and events;
- c) Retains the designated premises provisions, meaning that people must not be denied access to designated premises, or access to goods or services, on vaccination grounds (e.g., a pharmacy or supermarket); and
- d) Requires that a business or service in control of premises must allow people access to designated premises.

Green

- e) Retains the designated premises provisions, meaning that people must not be denied access to designated premises, or access to goods or services, on vaccination grounds; and
- f) Requires that a business or service in control of premises must allow people access to designated premises.

Capacity limits at Orange and Green

- 4. For the avoidance of doubt, these changes mean there will be no capacity limits in indoor or outdoor settings at Orange and Green, including in public facilities and retail. It also means that there are no seated and separated requirements at Orange and Green.

Requirements for a COVID-19 Order

- 5. 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) provided certain requirements are met, as set out below.

Purpose of the Act

- 6. COVID-19 Orders must be consistent with the purposes of the Act, which is:

“to support 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); and

(b) avoids, mitigates, or remedies the actual or potential adverse effects of the COVID-19 outbreak (whether direct or indirect); and

(c) is co-ordinated, orderly, and proportionate; and

(ca) allows social, economic, and other factors to be taken into account where it is relevant to do so; and

(cb) is economically sustainable and allows for the recovery of MIQF costs; and

(d) has enforceable measures, in addition to the relevant voluntary measures and public health and other guidance that also support that response.”

- 7. The Amendment Order is intended to further the purposes of the Act, as it is intended to proportionately manage the actual or potential adverse effects, of the COVID-19 outbreak across health, social, and economic domains by retaining measures that continue to minimise and reduce transmission of COVID-19.

Purpose of the amendment

8. The Act provides that you may make a COVID-19 order for one or more of the purposes set out in section 11 of the Act, which are appended to this briefing.
9. The requirement within the Amendment Order for workers to wear a medical-grade face mask at events, food and drink businesses and close-proximity businesses at Orange is in line with Section (11)(1)(a)(i) whereby the Amendment creates a requirement for persons to "... take specified action, or comply with any specified measures, so as to contribute or be likely to contribute to either... preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19".
10. The other amendments represent a reduction of restrictions or clarification of those already in place and therefore come within the purpose of the Act. The measures which remain, being some capacity limits at Red and requirements to wear masks, are designed to prevent and limit the risk of the spread of COVID-19.

Public Health Advice

11. 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.
12. Public health advice was provided when decisions were sought regarding the proposed Amendments on 21 March 2022 [CAB-22-MIN-0086 refers]. That advice supported the changes to the restrictions in the Order.

New Zealand Bill of Rights Act 1990

13. The Act also requires that you are satisfied that an order under section 11 of the Act does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA).
14. Legally privileged: s9(2)(h) [REDACTED]

Ministerial Consultation

15. 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 and may have regard to any decision by the Government on the level of public health measures are appropriate.
16. Officials understand that Ministerial Consultation was satisfied by the consultation that took place as part of the Cabinet deliberations.

48 Hour Notification Period

- 17. 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.
- 18. The Amendment Order will commence at 11.59pm on Monday 4 April 2022 which will allow for more than 48 hours between publication and being gazetted this evening and when it comes into force.

Attachments:	
Attachment A:	Orders that can be made under the COVID-19 Public Health Response Act
Attachment B:	COVID-19 Public Health Response (Protection Framework and Vaccinations) Amendment Order 2022 (Signature Copy)

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Attachment A: Orders that can be made under the COVID-19 Public Health Response Act

Section 11 of the COVID-19 Public Health Response Act states that the following Orders can be made under the Act.

(1) The Minister or the Director-General may, in accordance with section 9 or 10 (as the case may be), make an order under this section for 1 or more of the following purposes:

(a) to require persons to refrain from taking any specified actions or to take any specified actions, or comply with any specified measures, so as to contribute or be likely to contribute to either or both of the following:

(i) preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19:

(ii) avoiding, mitigating, or remedying the actual or potential adverse public health effects of the outbreak of COVID-19 (whether direct or indirect):

(b) by way of example under paragraph (a), requiring persons to do any of the following:

(i) stay in any specified area, place, or premises or refrain from going to any specified area, place, or premises (including in specified circumstances or unless in compliance with specified measures):

(ia) permit entry to any specified areas, places, or premises only in specified circumstances or in compliance with specified measures:

(ii) refrain from associating with specified persons:

(iii) stay physically distant from any persons in any specified way:

(iv) refrain from travelling to or from any specified area or place, or refrain from travelling to or from any specified area or place in specified circumstances or unless in compliance with specified measures (for example, refrain from leaving an area unless the person has a COVID-19 vaccination certificate):

(v) refrain from carrying out specified activities (for example, business activities involving close personal contact) or carry out specified activities only in any specified way or in compliance with specified measures:

(vi) be isolated or quarantined in any specified place or in any specified way:

(vii) refrain from participating in gatherings of any specified kind, in any specified place, or in specified circumstances:

(viii) report for and undergo a medical examination or testing of any kind, and at any place or time, specified and in any specified way or specified circumstances:

(ix) provide, in specified circumstances or in any specified way, any information necessary for the purpose of contact tracing:

- (x) satisfy any specified criteria before entering New Zealand from a place outside New Zealand, which may include being registered to enter an MIQF on arrival in New Zealand:
- (c) in relation to an MIQF, other place of isolation or quarantine, or a place of self-isolation or quarantine, to require specified actions to be taken, or require compliance with any specified measures, for the purpose of managing the movement of people to, from, and within the MIQF, other place of isolation or quarantine, or place of self-isolation or quarantine, including (without limitation) any of the following:
- (i) giving directions that relate to the movement of people to, from, and within the MIQF, other place of isolation or quarantine, or place of self-isolation or quarantine:
 - (ii) imposing restrictions and conditions that relate to the movement of people to, from, and within the MIQF, other place of isolation or quarantine, or place of self-isolation or quarantine:
 - (iii) permitting people to leave their rooms in the MIQF, other place of isolation or quarantine, or place of self-isolation or quarantine in accordance with any requirements or conditions specified in the order:
- (d) in relation to any places, premises, craft, vehicles, or other things, to require specified actions to be taken, require compliance with any specified measures, or impose specified prohibitions, so as to contribute or be likely to contribute to either or both of the following:
- (i) preventing, containing, reducing, controlling, managing, eliminating, or limiting the risk of the outbreak or spread of COVID-19:
 - (ii) avoiding, mitigating, or remedying the actual or potential adverse public health effects of the outbreak of COVID-19 (whether direct or indirect):
- (e) by way of example under paragraph (d), doing any of the following:
- (i) requiring any places, premises, craft, vehicles, or other things to be closed or only open if specified measures are complied with:
 - (ii) prohibiting any craft, vehicles, or other things from entering any port or place, or permitting the entry of any craft, vehicles, or other things into any port or place only if specified measures are complied with:
 - (iii) prohibiting gatherings of any specified kind in any specified places or premises, or in any specified circumstances:
 - (iv) requiring any places, premises, craft, vehicles, or other things to be isolated, quarantined, or disinfected in any specified way or specified circumstances:
 - (v) requiring the testing of any places, premises, craft, vehicles, or other things in any specified way or specified circumstances:
- (f) in relation to laboratories that undertake COVID-19 testing, by—
- (i) setting quality control measures and minimum standards:

(ii) requiring COVID-19 test results to be reported to the Director-General's public health national testing repository:

(iii) managing the supply of testing consumables (such as reagents and swabs) used by the laboratories:

(iv) providing differently for different classes of testing laboratories (for example, different provisions for laboratories depending on whether they are funded publicly or privately):

(g) requiring the owner or any person in charge of a specified laboratory that undertakes COVID-19 testing to—

(i) deliver or use, in accordance with directions given under the order, specified quantities of COVID-19 testing consumables that the Minister considers necessary for the purposes of the public health response to COVID-19:

(ii) undertake COVID-19 testing solely for the purposes of the public health response to COVID-19 while subject to the order, whether or not the laboratory is contracted by the Crown for that purpose:

(h) requiring persons to permit individuals to enter a place or receive a service whether or not those individuals are vaccinated, have a COVID-19 vaccination certificate, or are otherwise able to produce evidence of their vaccination status:

(i) specifying the evidence that may be required to be produced, and the person to whom the evidence may be required to be produced to, to demonstrate compliance with a specified measure (for example, specifying that a COVID-19 vaccination certificate is required to be produced to enter certain premises) and providing for any prohibitions or duties that apply in respect of the use or production of that evidence:

(j) specifying, for the purposes of a COVID-19 vaccination, the required doses for each COVID-19 vaccine or combination of COVID-19 vaccines:

(k) in relation to COVID-19 vaccination certificates,—

(i) specifying who is eligible to be issued with a COVID-19 vaccination certificate:

(ii) specifying how an application for a COVID-19 vaccination certificate must be made, and the information required to accompany that application:

(iii) providing for the issue, renewal, and extension of COVID-19 vaccination certificates by the Director-General or by the use of automated electronic systems (which certificates are to be treated as if they were issued, renewed, or extended by the Director-General):

(iv) providing for the form and content of COVID-19 vaccination certificates to be determined by the Director-General:

(v) specifying the period for which COVID-19 vaccination certificates are valid, or the conditions under which COVID-19 vaccination certificates may expire.

(2) An order made by the Minister may specify which breaches of an order made by the Minister or the Director-General are infringement offences for the purposes of section 26(3), and may

specify that a breach of an order is a particular class of infringement offence (with the corresponding penalties) for the purposes of regulations made under section 33(1)(b).

- (3) For the purposes of this section and section 12, things includes animals, goods, businesses, records, equipment, and supplies.
- (4) All goods prohibited from import under a COVID-19 order are deemed to be included among goods prohibited from import under section 96 of the Customs and Excise Act 2018, and the provisions of that Act apply to those goods accordingly.

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Attachment A: COVID-19 Public Health Response (Protection Framework and Vaccinations) Amendment Order 2022 (Signature Copy)

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