



Briefing

ALERT LEVEL REQUIREMENTS AMENDMENT ORDER FOR SIGNING - COVID-19 PUBLIC HEALTH RESPONSE (ALERT LEVEL REQUIREMENTS) ORDER (NO 12) AMENDMENT ORDER (NO 4) 2021

To: Hon Chris Hipkins
Minister for COVID-19 Response

Date	5/10/2021	Priority	URGENT
Deadline	5/10/2021	Briefing Number	DPMC-2021/22-491

Purpose

Attached to this briefing is the proposed COVID-19 Public Health Response (Alert Level Requirements) Order (No 12) Amendment Order (No 4) 2021, which we recommend that you sign. This Amendment Order moves Auckland into Stage 1 of the phased reduction in Alert Level 3 settings in the Auckland region. It adjusts the movement permissions to remove the ability to travel through the Auckland Alert Level area to travel into the Waikato Alert Level area to work. It finally provides some more permissive measures in the Alert Level 2 area, removing the capacity limits for hospitality and event venues, and the 'no-standing' rule for public transport.

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


1. **Note** that this briefing provides a summary of the key provisions of the proposed order.
2. **Note** that the necessary procedural requirements for the making of COVID-19 Orders have been complied with.

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3. **Note** the Director-General of Health's advice is that recreational travel to Waiheke Island and Great Barrier Island by anyone who is not a resident of those islands should be prohibited at Alert Level 3, due to low vaccination rates on these islands, their current COVID-19 free status, limited access to health care services and logistical challenges that would be present if a COVID-19 positive case developed severe illness requiring hospitalisation.
4. **Note** the Director-General also proposes to apply the restriction on travel outlined in recommendation 3 to all other offshore islands within the Auckland Alert Level 3 area.
5. **Note** that the proposals in recommendation 4 have not been subject to Ministerial consultation and are not included in the attached briefing, as officials intend to consider the implications of this change before proposing its inclusion in an amendment Order.
6. **Agree** to prohibit recreational travel to Waiheke Island and Great Barrier Island by anyone who is not a resident of those islands at Alert Level 3. YES / NO
7. **Sign** the COVID-19 Public Health Response (Alert Level Requirements) Order (No 12) Amendment Order (No 4) 2021. YES / NO

pp



Ruth Fairhall
Head of Strategy & Policy

05/10/2021



Hon Chris Hipkins
Minister for COVID-19 Response

5/10/2021

Contact for telephone discussion if required:

Name	Position	Telephone		1st contact
Ruth Fairhall	Head of Strategy & Policy, None	s9(2)(a)	s9(2)(a)	✓

Anna Ferguson	Policy Advisor	s9(2)(a)	n/a	
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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

Permitted travel into, out of, or through Alert Level Areas

1. Permissions for travel are adjusted so that a person may not travel through the Auckland part of the Alert Level 3 area (and return to their home or place of residence afterwards) for the purpose of going to work. This prevents, for example, someone commuting between Northland and Waikato for work purposes.
2. A new item is added to the list of activities for which travel into, out of, or through Alert Level Areas is permitted. The new item relates to forestry and wood product processing where the travel between Alert Level Areas is reasonably necessary to enable the business or service to be provided and where the activity cannot reasonably be delayed without substantial implications for the supply chain.

Adjustments to Alert Level 3 settings

Removal of physical distancing for early childhood services

3. Alert Level 3 settings are adjusted for education entities that are early childhood services (early childhood education and care centres (excluding specified playcentres), home-based education and care services, or hospital-based education and care services). Early childhood services will continue to be allowed to have customers and clients in the workplace without the contact record rule applying, subject to the condition that they must have systems and processes in place to keep children, students, and teachers in groups that are appropriately sized and stable so far as is reasonably practicable. But Alert Level 3 settings are adjusted so that early childhood services:
 - a) are not required to comply with the 1-metre physical distancing rule or the 2-metre physical distancing rule; and
 - b) need not have systems and processes in place to maintain compliance with the 1-metre physical distancing rule or the 2-metre physical distancing rule for people who are ordinarily at the education entity for the purposes of receiving or providing, or assisting in or supporting the receipt or provision of, education services; but
 - c) must have systems and processes in place to mitigate so far as is reasonably practicable the risks that arise to the extent that compliance with the physical distancing requirements that would otherwise apply to the services is not fully maintained (for example, regular cleaning of surfaces).

Expanded outdoor recreation

4. Alert Level 3 settings are also adjusted to permit expanded outdoor recreation and exercise of customary rights to fishing and food gathering. In particular, movement can be anywhere within the Alert Level 3 area, and may be to undertake activities currently prohibited (for example, water-based activities, or other activities that expose the participant to danger or may require search and rescue services such as flying small aircraft). Travel between the Auckland and Waikato parts of the Alert Level 3 area is not permitted for this purpose. It also must not involve travel to Great Barrier Island or Waiheke Island by anyone not resident on that island.
5. The Director-General of Health has recommended that travel to both Waiheke Island and Great Barrier Island is prohibited for recreation for anyone who is not a resident of those islands. This is to prevent Auckland residents, for example, travelling to their bach, or travelling to undertake recreation or customary activity, on those islands. Travel to either island for recreation would be limited to residents only.
6. This restriction is being proposed because of lower vaccination rates on these islands, their current COVID-19 free status, limited access to health care services and logistical challenges with transferring any COVID-19 positive cases requiring hospitalisation. It will also support the overarching intent of Alert Level 3 restrictions, to limit personal movement as much as possible.
7. The Director-General has further proposed that this restriction on travel be extended to all offshore islands within the Auckland Alert Level 3 area. This proposal is not included in the attached Order, as Ministerial consultation has not been undertaken and more analysis is required of the impact of this wider proposal.

Food or drink may be served at controlled gatherings

8. Alert Level 3 settings for a controlled gathering are also adjusted so that:
 - a) no more than 10 people, excluding workers, and no more than 5 workers, may be at any one time at the gathering, whether it is for a wedding or civil union service, viewing of a tūpāpaku or deceased person, a funeral service, or a tangihanga:
 - b) if the controlled gathering is indoors and food or drink is served, people who are eating or drinking must be seated.

People may leave home to attend limited outdoor gatherings

9. Alert Level 3 settings are also adjusted to permit a person to leave their home or place of residence to attend a 'limited outdoor gathering'. A limited outdoor gathering means a gathering that meets all of the following requirements:
 - a) the gathering occurs in any outdoor place in the Alert Level 3 Area
 - b) there are no more than 10 people at any one time at the gathering
 - c) each of those people reside at 1 of a total of no more than 2 homes or places of residence within the Alert Level 3 Area.

10. A limited outdoor gathering may be one at which food or drink is served or consumed, whether or not any person is seated. 2-metre physical distancing will continue to be encouraged between bubbles through guidance.

Former requirements continued for Waikato part of Alert Level 3 Area

11. In the Waikato part of the Alert Level 3 Area, the adjustments for expanded outdoor recreation, food or drink being served at controlled gatherings, and limited outdoor gatherings, do not apply. Instead, the former requirements are continued.

Adjustments to Alert Level 2 settings

12. The limit of 100 customers or clients at food and drink businesses and event facilities is removed and the physical distancing requirements instead effectively determine maximum capacity at those places.
13. The no-standing rule on public transport is removed.

Procedural Requirements for a COVID-19 Order

14. 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

15. 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.
16. This Amendment Order moves Auckland into Stage 1 of the phased reduction in Alert Level 3 settings in the Auckland region, along with other more permissive measures in removing the capacity limits to hospitality and event venues, and the 'no-standing' rules in the Alert Level 2 area. This generally relaxes otherwise applicable requirements.
17. However, one of the proposed amendments creates an additional restriction: removing the ability to travel through the Auckland Alert Level area to travel into the Waikato Alert Level area to work. We consider that in order for this amendment to be effective measure to limit the spread of COVID-19, it should be applied immediately. We therefore consider that the 48-hour notice period need not be observed in this case.

Ministerial Consultation

18. 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.

19. Ministerial consultation was undertaken regarding the phased reduction in Alert Level 3 settings in the Auckland region and changes to the Alert Level 2 setting as part of the Cabinet decision process. Your office has today conducted Ministerial consultation regarding the proposed changes to remove the ability to travel through the Auckland Alert Level area to travel into the Waikato Alert Level area to work and for those who are not ordinarily resident on Great Barrier Island or Waiheke Island to travel there for recreation. This requirement has therefore been complied with.

Public Health Advice

20. 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.

21. Public Health advice was provided regarding the phased reduction in Alert Level 3 settings in the Auckland region and changes to the Alert Level 2 setting as part of the Cabinet decision process [CAB-21-SUB-0407 refers]. Officials have today sought further public health advice regarding the limiting travel to Great Barrier or Waiheke Islands for recreational purposes to those that are ordinarily resident there. Public Health officials have advised that this restriction is required due to lower vaccination rates on these islands, their current COVID-19 free status, limited access to health care services and logistical challenges of transferring any COVID-19 positive cases requiring hospitalisation.

New Zealand Bill of Rights Act 1990

22. 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), which you are required to consider pursuant to s 9 of the Act

23. ^{s9(2)(h)}

24.

Attachments:	
Attachment A:	COVID-19 Public Health Response (Alert Level Requirements) Order (No 12) Amendment Order (No 4) 2021 (Signature Copy)

ATTACHMENT A

COVID-19 Public Health Response (Alert Level Requirements) Order
(No 12) Amendment Order (No 4) 2021 (Signature Copy)

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