



Briefing

PROTECTION FRAMEWORK AMENDMENT ORDER FOR SIGNING – COVID-19 PUBLIC HEALTH RESPONSE (PROTECTION FRAMEWORK) AMENDMENT ORDER (NO 3) 2021

To Minister for COVID-19 Response (Hon Chris Hipkins)			
Date	21/12/2021	Priority	URGENT
Deadline	21/12/2021	Briefing Number	DPMC-2021/22-1160

Purpose


Attached to this briefing is the proposed COVID-19 Public Health Response (Protection Framework) Amendment Order (No 3) 2021, which we recommend you sign. This Order moves all regions except Northland to the Orange setting of the Protection Framework from 11.59pm, 30 December 2021, provides for the settings for registered schools in 2022 and provides updates to the face covering and vaccine pass requirements in some settings. It also provides for further minor technical amendments to the current Order.


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
3. **Sign** the COVID-19 Public Health Response (Protection Framework) Amendment Order (No 3) 2021 (**Attachment A**)

YES / NO


Kay Baxter
Policy Manager
COVID-19 Group, DPMC
21/12/21


Hon Chris Hipkins
Minister for COVID-19 Response
21/12/21

Contact for telephone discussion if required:

Name	Position	Telephone	1st contact
Kay Baxter	Manager, Strategy and Policy, COVID-19 Group, DPMC	s9(2)(a)	
Jessica 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- Withdrawn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

PROTECTION FRAMEWORK AMENDMENT ORDER FOR SIGNING – COVID-19 PUBLIC HEALTH RESPONSE (PROTECTION FRAMEWORK) AMENDMENT ORDER (NO 3) 2021

Summary of the Amendments

Changing CPF settings to Orange for all regions except Northland from 30 December 2021

1. The main purpose of these amendments is to reflect the decisions made by Cabinet to move all regions except Northland to the Orange setting of the Protection Framework from 11.59pm, 30 December 2021.
2. On 13 December 2021, Cabinet agreed to keep Auckland at the Red level of the Protection Framework until 11.59pm, 30 December 2021, along with:
 - a) Taupō and Rotorua Lakes Districts;
 - b) Kawerau, Whakatane, Ōpōtiki Districts;
 - c) Gisborne District;
 - d) Wairoa; and
 - e) Rangitikei, Whanganui and Ruapehu Districts.
3. Cabinet also agreed that Auckland and the other Red areas above move to the Orange level of the Protection Framework from 11.59pm, 30 December 2021, subject to the case numbers continuing to track as expected. Northland will remain at Red and all other regions will remain at Orange until the next scheduled review in the week commencing 17 January 2022 [CAB-21-MIN-0534].
4. The Amendment Order makes provision for these requirements and the relevant parts come into force at 11.59pm, 30 December 2021.

Amendments to education settings for registered schools

5. It was previously decided to keep education settings for registered schools under alert level rules for the remainder of 2021. This amendment order makes the necessary amendments so that registered schools will operate under the Framework from 1 January 2022.
6. This Amendment Order makes amendments to the face covering rule in respect of indoor areas for registered schools at Red, and for persons on school transport services while at Red and Orange, which come into force at 11.59pm, 31 December 2021.

Amendments which have been the subject of separate briefings

7. The remaining amendments will come into force at 11.59pm, 23 December 2021.

8. The Amendment Order provides that the prohibition for people being denied access to certain goods, services, and premises on vaccination grounds extends to people seeking to access services provided by the Ministry of Social Development [MSD Report – file ref: A13798995 refers]. Further, it enables specified KiwiRail providers to require vaccination passes from passengers [MOT - OC210986 refers].
9. This Amendment Order also provides that at Orange and Red, the passengers within their allocated carriage on a specified Kiwi Rail service are exempt from the face covering rule.

Additional minor technical amendments

10. There are also minor technical amendments to reflect the original policy intent of the Order following feedback received since the Order was signed and to improve readability:
 - a) clarify sections relating to the definitions of education entities and education services as they operate under the Order;
 - b) exclude DOC visitor accommodation from the definition of a public facility;
 - c) enable toilets at an outdoor sports facility to remain open when indoor parts of the facility are otherwise closed in a localised lockdown situation (not currently activated);
 - d) ensure that the exemptions from the Order do not apply to premises used to provide shelter or emergency and temporary housing for people in a civil defence emergency for the purpose of a designated premises;
 - e) amendments to the definition of food and drink business and gyms for increased clarity and the provision of examples in relation to the application of clause 55 to food and drink businesses to better explain how these requirements apply;
 - f) clarify that if an activity meets the definition of an event, it should follow those rules rather than the rules for a gathering;
 - g) remove the applications of the fixed number gatherings rule under clause 48 of the Order, at Red, and replacing it with the application of fixed capacity gatherings rule under clause 47 to correct an error in the original drafting.
 - h) require a business or service in control of a premises that includes designated premises (eg a shopping mall which contains a supermarket) to have systems and processes to ensure that people can access a designated premise through their business but cannot access other parts of the premises in compliance with any applicable COVID-19 provisions.
 - i) further clarification of the “entertainer” exception from the face covering rule, to include people presenting to an audience (including at a faith based gathering) and a further exception for persons in DOC visitor accommodation (which might otherwise be captured by premises operated by a central government agency).

Procedural Requirements for a COVID-19 Order

11. 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

- 12. The Act requires that a COVID-19 Order must be published and gazetted at least 48 hours before it comes into force. The 48-hour period is complied with in relation to all of the proposed amendments.

Ministerial Consultation

- 13. 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.
- 14. Ministerial consultation was undertaken regarding the change in CPF settings as part of the Cabinet process. Your office has conducted consultation with the relevant Ministers' offices on the other substantive amendments that were the subject of separate briefings prior to drafting commencing.

Public Health Advice

- 15. 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.
- 16. Public health advice was provided regarding the change in CPF settings as part of advice to Cabinet. Public health advice was also provided on the other substantive amendments which were the subject of separate briefings.

New Zealand Bill of Rights Act 1990

- 17. 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).
- 18. s9(2)(h)

Attachments:	
Attachment A:	COVID-19 Public Health Response (Protection Framework) Amendment Order (No 3) 2021 (Signature Copy)

ATTACHMENT A

COVID-19 Public Health Response (Protection Framework)
Amendment Order (No 3) 2021 (Signature Copy)

Proactively Released

PROTECTION FRAMEWORK AMENDMENT ORDER FOR SIGNING	DPMC-2021/22-1160
--	-------------------