



Briefing: PROTECTION FRAMEWORK AMENDMENT ORDER FOR SIGNING – COVID- 19 PUBLIC HEALTH RESPONSE (PROTECTION FRAMEWORK) AMENDMENT ORDER (NO 4) 2022

Date:	10/03/2022	Report No:	DPMC-2021/22-1624
		Security Level:	[IN-CONFIDENCE]
		Priority level	[URGENT]

	Action sought	Deadline
Minister for COVID-19 Response (Hon Chris Hipkins)	agree/disagree to recs	10/03/22

Name	Position	
Kay Baxter	Manager, Strategy and Policy, COVID-19 Group, DPMC	s9(2)(a)
Jessica Gorman	Principal Solicitor, 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Withdrawn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) AMENDMENT ORDER (NO 4) 2022

To: Minister for COVID-19 Response (Hon Chris Hipkins)			
Date	10/03/2022	Security Level	[IN CONFIDENCE]

Purpose

1. Attached to this briefing is the proposed COVID-19 Public Health Response (Protection Framework) Amendment Order (No 4) 2022, which we recommend that you sign. This order makes a number of changes to the face mask requirements, including introducing exemptions for outdoor gatherings and when exercising or playing sport, and makes changes to the use of COVID-19 Vaccination Certificates within extra-curricular and curricular school activities.
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

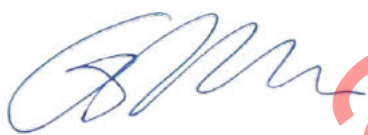
We recommend you:

1. **note** that this briefing 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 amendment
 - 2.2 public health advice
 - 2.3 New Zealand Bill of Rights Act 1990
 - 2.4 Ministerial consultation
 - 2.5 the 48-hour notification period

- 3. **sign** the COVID-19 Public Health Response (Protection Framework) Amendment Order (No 4) 2022 (Attachment A)

YES NO


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


Hon Chris Hipkins
Minister for COVID-9 Response
..10.../..03.../2022

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Summary of the Amendments

Changes to face mask requirements [Legally Privileged in Part]

1. This Amendment Order introduces exemptions from face mask requirements at outdoor gatherings and when exercising and playing sport [DPMC-2021/22-1391].
2. The Amendment Order also introduces face mask requirements for those in attendance at events as per a previous Cabinet decision [CAB-22-MIN-0001 and DPMC-2021/22-1391 refer].
3. A further exemption is created to exempt the following workers from being required to wear a medical grade face mask:
 - a) Vaccine-mandated workers on the premises of tertiary education providers;
 - b) Workers providing health services. (This category is a total exemption, i.e. a removal from the requirement to wear face masks altogether as per the previous position. Instead DHBs manage directly who needs to wear face masks and what type).
4. In line with a decision made by the Minister [DPMC-2021/22-1391] the Amendment will reduce the circumstances in which delivery drivers are required to wear face masks. Face masks will no longer be required when undertaking contactless delivery but will still be required for deliveries that require signature (i.e. when the delivery driver is in close proximity to a client or customer).

Changes to the use of COVID-19 Vaccination Certificates within extra-curricular and curricular activities

5. This Amendment clarifies that secondary school students participating in vaccine-mandate work as part of study programmes on tertiary premises are required to be vaccinated (e.g. undertaking work experience in a food and drink business or a close proximity business such as a hair salon).
6. The Amendment will prohibit a person from denying access on vaccination grounds to a student participating in an extra-curricular or curricular activity (except for as noted in paragraph 5 above). This includes any inter-school or intra-school extracurricular activity, plus any activity where the student is representing the school or participation has been organised by school, but non-school affiliated teams may be competing (club leagues). In practice, this will mean that these students must be treated by the activity (including event or gathering) organiser as if they were vaccinated [DPMC-2021/22-1513].
7. Finally, the Amendment will align the approach for Education Outside the Classroom to the extracurricular activity as outlined above, so that all school-related activities are treated on the same basis [DPMC-2021/22-1513].

Requirements for a COVID-19 Order

8. 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). COVID-19 Orders may only be made for one or more of the purposes provided in the Act and must be consistent with the purposes of the Act itself, 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.”

9. In addition, 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.

Purpose of the amendment

10. 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 (Attachment A).
11. The requirement within the Amendment Order to wear a face mask at an event 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”.
12. The other amendments represent a reduction of restrictions or clarification of those already in place.

Public Health Advice

13. 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.
14. Public health advice was provided when decisions were sought regarding the proposed Amendments on 25 January 2022 [CAB-22-MIN-0001], 17 February 2022 [DPMC-2021/22-1391] and 24 February 2022 [DPMC-2021/22-1513].

New Zealand Bill of Rights Act 1990 [Legally Privileged]

15. 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).

16. s9(2)(h) [Redacted]

Ministerial Consultation

- 17. 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.
- 18. Officials understand that Ministerial Consultation regarding this Amendment Order has been conducted by your office.

48 Hour Notification Period

- 19. 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.
- 20. The Amendment Order will commence at 11.59pm 12 March 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) Amendment Order (No 3) 2022 (Signature Copy)

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 B: COVID-19 Public Health Response (Protection Framework)
Amendment Order (No 3) 2022 (Signature Copy)**

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