

## Responding to COVID-19: New rules for new arrivals into New Zealand

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Following recent scrutiny of how the isolation and quarantining of new arrivals into New Zealand is being managed, the [COVID-19 Public Health Response \(Air Border\) Order 2020](#) (the New Order) came into effect on Monday (22 June) at 11.59pm.

Previous orders setting requirements for isolating and quarantining at the border were made by the Director-General of Health under the Health Act 1956 (see our [previous legal update](#)). In contrast, the New Order was made by the Minister of Health under sections 9 and 11 of the new [COVID-19 Public Health Response Act 2020](#) (see our [previous legal update](#) on this Act).

The purpose of the New Order is described as being to prevent, and limit the risk of, the outbreak or spread of COVID-19 by putting in place quarantine and isolation requirements for persons arriving in New Zealand by air. The requirements for new arrivals to go into quarantine/isolation have, of course, been in place for some time, with the first such order having been made by the Director-General on 16 March (before New Zealand even entered Alert Level 4). However, those requirements have been modified a number of times through the issuing of new Health Act orders, to reflect the evolving nature of New Zealand's response to managing COVID-19 at the border.

The New Order replaces the Director-General's 9 April and 8 May Health Act orders relating to new arrivals into New Zealand (the Former Orders). The requirements imposed on arrivals under the New Order are substantially the same as those imposed under the Former Orders, however there are a few key differences, which we comment on below.

### What does the New Order do?

First, like the Former Orders, the New Order provides that every person arriving in New Zealand by air (except for excluded arrivals, as discussed below) must have a medical examination and test as soon as practicable after their arrival. However, the New Order also provides that arrivals must also be tested whenever requested by a medical officer of health or a health protection officer during their required period of quarantine. This is in contrast to the Former Orders, which did not provide for further testing after the initial 'on arrival' testing.

Medical examination and testing involve testing for temperatures, seeking information on symptoms, carrying out chest auscultation, and swabbing as required to test for COVID-19.

Second, the New Order requires arrivals (except excluded arrivals) to be isolated or quarantined for at least 14 days following the person's 'start date'. The 'start date' concept has been introduced in the New Order. A person's 'start date' is the date they arrived in New Zealand, or the date at which a fellow resident joins the person at that person's place of isolation or quarantine. That means, for example, if a person is joined in isolation by a family member two days after the person arrived in New Zealand, the person's 14 days of required isolation will 're-start', and the person will have to spend at least 16 days in isolation.

In order to be able to leave isolation or quarantine after 14 days, the Director-General must be satisfied that the person meets the low risk indicators. That means that the person must have been tested for COVID-19 and have received a negative result, and be considered to be at a low risk of having or transmitting COVID-19. If the Director-General cannot be satisfied of those matters (including because a person refuses to undergo a test), he can require new arrivals to isolate for longer than 14 days to meet the low risk indicators. However, he cannot require that new arrivals isolate for longer than 28 days after their start date (even if the person has refused to submit to a test).

The New Order requires that a person in isolation or quarantine must:

- Remain at the person's place of isolation or quarantine as determined by a medical officer of health or a health protection officer. A person deemed to be at a low risk of transmitting COVID-19 will be required to remain in managed isolation in a 'low risk facility', whereas a person deemed to be high risk for transmitting COVID-19 will be required to remain in quarantine in a 'high risk facility'. At present, both low risk and high risk facilities are hotels contracted by the Government. In exceptional cases (eg, a person's physical or other needs), a person may be isolated or quarantined elsewhere
- Maintaining physical distancing to the greatest extent practicable from all other persons except those residing with the person

(including other people that are also being isolated or quarantined at the same facility)

- Wear personal protective equipment as directed by a medical officer of health or a health protection officer. This was not a requirement under the Former Orders.

People in isolation can obtain permission to leave their place of isolation in certain circumstances, including to engage in outdoor exercise by the Director-General, if necessary due to an emergency, and to access medical services. The only substantial change from the Former Orders is that the Director-General has a discretion to authorise outdoor exercise, whereas previously exercise or recreation had to be within a two kilometre radius.

A person who intentionally fails to comply with the New Order will commit an offence and is liable on conviction to imprisonment for a term not exceeding six months or a fine not exceeding \$4,000.

## Who are the 'excluded arrivals' that are not subject to isolation/quarantining?

One aspect of the Former Orders that has received media attention recently is the exclusion of certain people from the requirement to be tested for COVID-19 upon arrival and to isolate. The New Order retains a similar definition of excluded arrivals, which includes:

- Any aircraft pilots or flight crew members (though the Ministry of Health has provided [guidance to air crew](#) on how to reduce the risk of transmitting COVID-19, and many Air New Zealand staff are tested)
- Maritime crew members transferring to a ship immediately after their arrival in New Zealand
- Medical attendants assisting with medical air transfers
- A person designated by the Director-General as critical to providing services to assist with the response to COVID-19
- Any person who has diplomatic immunity
- Members of the New Zealand Defence Force who are returning from service outside of New Zealand (this is a new addition that was not in the Former Order).

## When may a 'compassionate exemption' be granted

Another aspect of the Former Orders that has been the subject of media attention, and resulted in announcements that compassionate exemptions are temporarily suspended, is the ability for officials to grant compassionate exemptions to new arrivals, such as people wanting to be with terminally ill family members or to attend a funeral.

As with the Former Order, the New Order provides that arrivals can be permitted to leave their place of isolation for any exceptional reason if authorised by the Director-General, which can include conditions. "Exceptional reason" is not defined, leaving significant discretion to the Director-General.

However, following criticisms that two arrivals from the United Kingdom who were allowed to leave isolation without having a confirmed negative COVID-19 test result, the New Order introduces certain factors that the Director-General must take into account before authorising a person to leave. These include:

- Any impact that the person's leaving might have on the risk of an outbreak or the spread of COVID-19
- That the Director-General can be satisfied, on the basis of the advice of a suitably qualified health practitioner, that the person meets the low risk indicators. Low risk indicators include that:
  - the person has submitted for a medical test for COVID-19 and the result is negative
  - that any other medical tests or information relating to the person indicate that the person is at low risk of having or transmitting COVID-19
- That the Director-General can be satisfied that the person will comply with any conditions of the authorisation.

## What next?

Having experienced both the jubilation of there being no active cases in New Zealand, and the angst caused by a few COVID-19 cases being picked up at the border, New Zealanders are intensely interested in the rules for isolating and quarantining new arrivals, and how they are applied. The COVID-19 Public Health Response Act 2020 provides the Government with a mechanism (ie the issuing of orders) to put in place new rules and requirements as necessary to ensure that new COVID-19 cases are picked up and contained at the border. At some stage (hopefully in the not too distant future), we may also see thought being given to what sort of border controls should be put in place to enable New Zealand to enter a bubble with Australia or some of its Pacific Island neighbours. As always, we watch with interest developments in this area.

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