



Briefing

TEMPLATE ALERT LEVEL ORDER

To: Hon Chris Hipkins
Minister for COVID-19 Response

Date	11/12/2020	Priority	Medium
Deadline	16/12/2020	Briefing Number	DPMC-2020/21-324

Purpose

1. This briefing provides a template section 11 Order (COVID Order) under the COVID-19 Public Health Response Act 2020 (the COVID Act) in response to an Alert Levels 3 and 2 situation. The template is to be completed by 18 December as a key part of the COVID-19 response planning over the summer holiday period.
2. The template Order has been prepared to enable a swift, efficient and accurate legislative response to any future resurgence of COVID-19. If a decision is made to increase Alert Levels, the template will form the basis from which a COVID Order is prepared, for any combination of Alert Levels 1-3.
3. We recommend that you provide the draft COVID Order for feedback to those Ministers you are required to consult when making section 11 orders.

Recommendations

1. **Note** that the Parliamentary Counsel Office, working with cross agency officials, has developed an updated template Alert Levels 3 and 2 Order as part of ongoing preparation for resurgence;
2. **Note** that the draft template Order incorporates policy decisions agreed by the Cabinet Business Committee (with Power to Act) recommended in the paper, *COVID-19 response planning for the summer holiday period* [CBC-20-MIN-0122];
3. **Note** that the Cabinet Business Committee (with Power to Act) also agreed to authorise you to take any further minor and technical policy decisions in relation to the drafting of Orders under the COVID-19 Public Health Response Act 2020;

4. **Note** that the draft template Order also includes the following other minor changes not previously tested with Ministers:

- 4.1. Removing the use of infringement offences for breaches of the order that are committed by entities (rather than natural persons);
- 4.2. consistency in the physical distancing requirements that apply to transport hubs across alert levels, to achieve better alignment with the requirements applying on public transport;
- 4.3. clarifying that at Alert Level 3, outdoor gatherings of people who are guests in accommodation services with shared facilities or common areas (e.g. backpackers or seasonal working accommodation) are permitted but must not exceed 10 people;
- 4.4. other minor or technical changes;

5. **Approve** the attached draft template Alert Levels 3 and 2 Order for consultation with the following Ministers, with feedback to be provided by Wednesday 16 December:

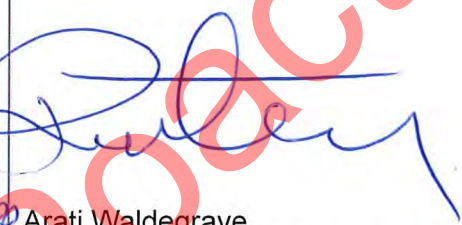
- 5.1. The Prime Minister;
- 5.2. The Minister of Justice;
- 5.3. The Minister of Health;

YES / NO

OR

6. **Provide feedback** on the draft template Orders prior to providing to other Ministers.

YES / NO


 Arati Waldegrave
 Head of Policy and Strategy,
 COVID-19 Group

11/12/2020

Hon Chris Hipkins
 Minister for COVID-19 Response

...../...../2020

Contact for telephone discussion if required:

Name	Position	Telephone	1 st contact
Arati Waldegrave	Head of Strategy and Policy	s9(2)(a)	✓
Rebecca Thornley	Principal Solicitor	s9(2)(a)	

Minister's office comments:

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to

TEMPLATE ALERT LEVEL 3/2 ORDER

Purpose

1. This briefing provides a template section 11 order (COVID Order) under the COVID-19 Public Health Response Act 2020 (the COVID Act) in response to an Alert Levels 3 and 2 situation. The template is to be completed by 18 December as a key part of the COVID-19 response planning over the summer holiday period.
2. We recommend that you share the draft COVID Order with those Ministers you are required to consult with when making section 11 orders for any feedback that they might have.

Background

3. As previously discussed with you, cross-agency officials, working with the Parliamentary Counsel Office (PCO) have developed a template COVID Order for Alert Levels 3 and 2.
4. The template order has been prepared to enable a swift, efficient and accurate legislative response to any future resurgence of COVID-19. If a decision is made to increase Alert Levels, the template will form the basis from which a COVID Order is prepared, for any combination of Alert Levels 1-3.
5. Officials and the Director-General of Health will still need to advise on the measures appropriate given the specific context of any potential Alert Level change, including advice on NZ Bill of Rights Act implications. Decisions regarding those measures will be reflected in the COVID Order that is prepared using the template.
6. You will still need to consult other Ministers before signing a COVID Order, irrespective of any previous consultation on a template order.
7. The template COVID Order was developed through a collaborative policy and legal analysis process with agencies, to ensure that any issues associated with previous COVID Orders were identified and considered.
8. All proposed changes take account of public health advice, and the considerations that contribute to policy settings for COVID Orders, to ensure measures are consistent with the purpose of the Act. The list in Attachment A sets out each of the subject areas for which drafting is set out in the template.
9. The proposed changes fall into three broad categories:
 - a) Those required to give effect to recent proposals in the Cabinet Paper, 'COVID-19 response planning for the summer holiday period' agreed by the Cabinet Business Committee on 9 December 2020 [CBC-20-MIN-0122]. As these have already been agreed at Committee, they are described only briefly here.
 - b) Minor policy changes proposed by officials through the process. These are described below.
 - c) Technical changes that do not affect policy or implementation. These are not described in this briefing, but more detail can be provided on request.

10. We are seeking your approval of the attached template COVID Order for consultation with those Ministers you are required to consult with when making orders under the COVID Act: the Prime Minister, the Minister of Justice and the Minister of Health.

Changes agreed to by CBC

11. The Cabinet Paper, *COVID-19 response planning for the summer holiday period* considered by CBC on 9 December 2020 proposed changes relating to internal boundary settings and allowable business activity at Alert Level 3. The recommendations below, agreed by CBC, and set to be considered by Cabinet on 14 December, are incorporated into the attached template Order.
12. The permitted movement for business and services largely confirms the permissions that Cabinet has already agreed and were in place at the end of the last period of Alert Level 3/2. However, CBC agreed that the following categories be included in 'Category 2, (movement likely to be permitted, but an assessment of the appropriate level of permitted movement would be required in each resurgence):
 - a) production, processing and supply of food and beverage and associated supply chains;
 - b) veterinary and animal health and welfare services;
 - c) vehicle maintenance services;
 - d) transportation of the deceased/tūpāpaku;
 - e) union representatives; and
 - f) State services and local government.
13. CBC also agreed to amend the settings with regards to businesses and services at Alert Level 3 to:
 - a) provide that contactless pick-up be permitted to take place within malls, outside individual stores rather than outside the mall itself; and
 - b) allow primary produce retailers to operate on the same basis as supermarkets and dairies – i.e. with customers on their premises.
14. Subsequently, you have requested advice regarding the inclusion of retail bakeries, as a business or service that may have customers on their premises under the same conditions as primary produce retailers. That advice will be provided separately, and the addition of retail bakeries has not yet been instructed for the template COVID order.

Other policy changes

15. CBC has authorised you to take any further minor and technical policy decisions in relation to the drafting of Orders under the COVID Act [CBC-20-MIN-0122]. These minor policy changes are reflected in the draft Order are described below.

Infringement offences

16. 9(2)(h)

[REDACTED]

9(2)(h)

[REDACTED]

17. 9(2)(h)

[REDACTED]

18. The template COVID Order incorporates the following policy changes and clarifications:

- a) consistency in the physical distancing requirements that apply to transport hubs across alert levels, to achieve better alignment with the requirements applying on public transport. This simplifies requirements within transport hubs to improve understanding and compliance for both operators and users.
- b) clarifies that an 'official NZ government issued document' may be provided as evidence of the purpose of travel across an Alert Level boundary, and purpose for transit through an Alert Level area. This is primarily to enable the use of 'Business Travel Documents' issued by MBIE as a source of evidence.
- c) clarifies that people who are guests in accommodation services with shared facilities or common areas (e.g. backpackers or seasonal working accommodation) are permitted to gather. This must not exceed 10 people at Alert Level 3, and is to be the same 10 people, similar to fellow residents. This ensures a controlled approach for those people who are staying in the accommodation together, or for social or health support reasons, should be permitted to get together.
- d) physical distancing for air transport services and small passenger service vehicles has been varied from the 1-metre rule for public transport to align the obligation with the operational reality that physical distancing is required to the maximum extent that is reasonably practicable.

19. Attachment B provides further detail on these changes as well as additional technical changes reflected in the template COVID Order.

20. In addition, the template COVID Order has been somewhat restructured from previous versions. This is simply to make the Order more 'user-friendly' and improve readability.

Next Steps

21. We recommend that you approve this template COVID Order for consultation with those Ministers that you will be required to consult with prior to making any orders, so any concerns those Ministers may have may be identified in advance and addressed. As stated previously, this 'pre-consultation' does not remove the requirement for you to consult prior to making a COVID Order, where Ministers can have regard to the specifics of the circumstance.
22. On that basis, we recommend you approve the template COVID Order for consultation with the:
 - a) Prime Minister
 - b) Minister of Justice
 - c) Minister of Health.
23. To finalise a template COVID Order before the summer holiday period, which takes into account the views of Ministers, we recommend that you ask for any feedback by Wednesday 16 December. We also request your feedback by that time.
24. Due to time constraints, the template Order has also been provided in parallel to Chief Legal Advisers of all departments for any feedback. If any substantive change is required due to feedback from that process, we will inform you and if you approve, this will be incorporated into the final template Order.
25. Subject to that feedback, PCO will finalise and undertake quality assurance on the Order. The final template Order will be provided to relevant agencies and Ministers' offices by 23 December.

Consultation

26. The development of the template Order was a collaborative process including: the Parliamentary Counsel Office, Crown Law Office, the Ministry of Health, the Ministry of Business Innovation and Employment, the Ministry for Primary Industries, the Ministry of Social Development, the Ministry of Transport, the Ministry of Justice, the Ministry of Education, the Department of Corrections and the New Zealand Police.
27. The following agencies were consulted on this briefing: the Ministry of Health, the Parliamentary Counsel Office, the Crown Law Office and the Ministry of Business Innovation and Employment.

Attachments:	
Attachment A:	List of drafting in template order for alert levels 2 and 3 (11 December 2020)
Attachment B:	Changes reflected draft template Order
Attachment C:	Draft template Alert Levels 3 and 2 Order

ATTACHMENT A:

List of drafting in template order for alert levels 2 and 3 (11 December 2020)

Alert level/generic requirements	Ready once template finalised
Alert levels 2 and 3 Display of QR codes in workplaces and on public transport services	✓
Face covering requirements on public transport services	✓
Face covering requirements on domestic air transport services	✓
1-metre and 2-metre physical distancing rules	✓
Defined boundary between alert level 2 area and alert level 3 area	Policy decision on boundary required at time of resurgence*
Permissions for category 1 and 2 travel between alert level areas	✓ Policy decision on permission for category 2 travel required at time of resurgence*
Alert level 2 Workplaces to have contact tracing systems and processes	✓
Physical distancing requirements in workplaces in alert level 2 area and any adjustments in specified workplaces	✓ Policy decision on whether food may be ordered at counter/table required at time of resurgence*
Social gatherings in alert level 2 area	✓
50 limit for authorised funeral or tangihanga if social gathering limit is 10	Policy decision on number limit for social gatherings required at time of resurgence*
Alert level 3 Stay-at-home requirements and permissions for essential personal movement in alert level 3 area	✓
Physical distancing requirements and adjustments for all individuals in alert level 3 area	✓
Closure of premises unless alert level 3 requirements operating	✓

Workplaces to have contact tracing systems and processes	✓
Physical distancing requirements for workplaces and any adjustments in specified workplaces	✓
Prohibition on gatherings in outdoor places	✓
Contact tracing for controlled gatherings	✓
List of category A and category B businesses or services	✓
Transitional option at Alert level 3	✓
Allow people 48 hours to leave and go back home	Policy decision on whether to include this required at time of resurgence*

Proactively Released

ATTACHMENT B:

Changes reflected in the draft template Order

Subject	9(2)(h)	Change reflected in template Order
<i>Transport – Physical distancing on public transport</i>		<ul style="list-style-type: none">• Air transport services and small passenger service vehicles to have systems and processes to maintain compliance with physical distancing, to the maximum extent that is reasonably practicable, taking into account the nature of the service.
<i>Transport – Physical distancing in transport hubs</i>		<ul style="list-style-type: none">• Apply consistent 1m physical distancing rule within transport stations across Alert Levels 2 and 3.
<i>Transport – School Transport</i>		<ul style="list-style-type: none">• Drivers of school transport are to be exempt from this requirement, removing the need for a DG exemption.• School transport to be included in the schedule of permitted cross boundary travel (when this is appropriate to include), or by DG exemption.
<i>Transport – Public Transport service (private or charter services)</i>		<ul style="list-style-type: none">• Redraft the definition of “public transport services” to be clear what transport types are to be covered by this.• Where the reason for the charter is a social gathering, those requirements apply.
<i>Transport – Exceptions to face coverings</i>		<ul style="list-style-type: none">• Remove the term “without reasonable excuse”.• Include “or crewing”, or language to that effect, to clarify that the exception applies to a vehicles crew.

<p>Travel – Travel registers</p>	<p>9(2)(h)</p>	<ul style="list-style-type: none">• Reference an official NZ government issued document as evidence for purpose of travel. A business travel document (or personal travel document) will not be referenced specifically as this could be restrictive.• Police do not have to accept the document as the only evidence and can additionally consider other evidence.
<p>Gatherings – Controlled gatherings (AL3)</p>		<ul style="list-style-type: none">• Relocate the definition with the prohibition on outdoor gatherings (controlled gatherings are an exception).• Include a requirement to maintain a contact tracing record for attendees, similar to the organisations of a social gathering at Alert Level 2.
<p>Gatherings – residents of accommodation services (AL3)</p>		<ul style="list-style-type: none">• At Alert Level 3, people who are guests in accommodation services with shared facilities or common areas (e.g. backpackers of seasonal working accommodation) may gather, similar to fellow residents. This must not exceed 10 people and must be the same 10 people. <p>*This is subject to ongoing discussion for the best drafting approach to achieve the policy intent.</p>
<p>Gatherings – Organising social gatherings (AL2)</p>		<ul style="list-style-type: none">• Remove “not likely to exceed” from the clause.• Insert reference to the contact tracing record being maintained in accordance with the Privacy Act 1993.

	9(2)(h)	
<i>Businesses and services (AL3)</i>		<ul style="list-style-type: none">• All other businesses and services (who do not have adjustments specified in the order, e.g. Category B businesses) within a shopping mall must, so far as reasonably practicable, ensure that people who are permitted to enter (not customers or clients) either:<ul style="list-style-type: none">○ Scan the QR code, or○ Provide details for a contact tracing record.
Infringement offences		<p>Remove infringements offences associated with failure to comply with requirements on entities. These include:</p> <ul style="list-style-type: none">• Workplaces (businesses and services) must have systems and processes in place to maintain compliance with physical distancing.• Additional and adjusted requirements associated with particular types of entities (e.g. requirement for category B business to have systems and processes in place to prevent food and drink from being served for consumption on the premises).

The COVID-19 Public Health Response (Alert Level Requirements) Order 2020 is publicly available at: <https://www.legislation.govt.nz/>