

Briefing

PROCESS FOR EXEMPTIONS FROM REQUIREMENTS AT ALERT LEVEL 4

To Minister for COVID-19 Response (Hon Chris Hipkins)			
Date	24/08/2021	Priority	Medium
Deadline	25/08/2021	Briefing Number	DPMC-2021/22-208


Purpose

This briefing responds to your request for an overview of the process for exemptions from the requirements under the COVID-19 Public Health Response (Alert Level Requirements) Order (No 9) 2021. It outlines the scope of permitted activities and exemptions, and the work underway to improve the process for responding to exemption requests.

Recommendations


1. **Note** there have been numerous queries about, and requests for exemption from, the requirements of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 9) 2021 (the ALR Order)
2. **Note** that the Director-General of Health has the power to grant exemptions from the requirements under Clause 24 of the ALR Order
3. **Note** that officials consider there is currently no need to expand permitted activities under the ALR Order or to extend or limit the scope of exemptions
4. **Note** that a new point of entry is being established for individuals to apply for exemptions
5. **Note** that further advice will be provided on possible additional provisions to strengthen the policy intent of the exemption-making power

6. **Note** that many requests for exemptions received to date relate to activities already permitted under the ALR Order and that strengthened communications are underway to help reduce unnecessary requests



Amber Bill
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24/08/2021



Hon Chris Hipkins
Minister for COVID-19 Response

25/08/2021

Contact for telephone discussion if required:

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Minister's office comments:

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- Withdrawn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

PROCESS FOR EXEMPTIONS FROM REQUIREMENTS AT ALERT LEVEL 4

Background

1. There have been numerous queries about, and requests for exemption from, the standing requirements of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 9) 2021 (the ALR Order) since it came into force at 11.59pm on 17 August 2021. These requests have been sent to a range of different agencies and people, including to your office.
2. In response to your request for an overview of the exemptions process, this briefing sets out the process for requests for exemptions from the ALR Order; what is already permitted as essential movement or services; and improvements that are underway to the exemptions process, including a channel through which individual requests can be made.

Exemption requests and permitted activities

3. Exemptions from the requirements of the ALR Order can be granted by the Director-General of Health under Clause 24. This clause provides for the granting of an exemption, subject to satisfaction that the exemption is necessary or desirable to promote the purposes of the COVID-19 Public Health Act 2020 (the Act) or the ALR Order, and that the extent of the exemption is not broader than is reasonably necessary (see Attachment A for the full provision).
4. Exemptions are not needed for activities that are already permitted under the ALR Order. Permitted activities include essential personal movement specified under Clause 16 as for the purpose of:
 - Accessing AL4 businesses or services
 - Accessing exempt businesses or services
 - Working
 - Limited recreation purposes
 - Limited customary purposes
 - Shared bubble arrangements and shared caregiver arrangements
 - Care of a child or person in critical or terminal condition
 - Accessing health services
 - Accessing judicial institutions
 - Leaving or relocating home on court order
 - Leaving New Zealand
 - Emergencies
 - Relocating home or place of residence in an emergency
 - Going home after isolation or quarantine (or arrival)
 - Caring for pets or other animals
 - Assisting a fellow resident
5. The ALR Order also specifies which businesses and services may operate as exempt services (Clause 23) or as Alert Level 4 businesses or services (Schedule 2).
6. Requests for exemptions from requirements where there is no existing permission in the ALR Order must be put to the Director-General of Health for consideration under Clause 24.

7. Exemptions that are approved for a specified person, business or service must be notified to the applicant and to the exempt person, business or service. Class exemptions that are approved must be published on a publicly accessible Internet site maintained by or on behalf of the New Zealand Government, and also notified in the Gazette (<https://gazette.govt.nz/home/NoticeSearch?act=Exemptions&soloRedirect=false>).
8. To date, exemptions have been approved (see Attachment B) for:
 - a) essential activities identified after the ALR Order was made, such as the need to support the pickup of educational resources from early learning services and schools (which should be included in a future amendment order);
 - b) circumstances that were genuinely exceptional, and consistent with the intent behind the exemption-making power, such as the need to provide food and drink to passengers in transit at Auckland airport where they may need to wait for extended periods and no other facilities are available.

Scope of permitted activities

9. Officials have considered whether there is a need to expand permitted activities under the ALR Order or to extend or limit the scope of exemptions. The initial advice is that currently there is not.
10. The existing list of permitted activities and services has a focus on supporting health, safety and wellbeing and enabling essential services, and is informed by the lessons learnt from previous Alert Level Orders. For example, activities that were not specified as permitted under the previous ALR Order for Alert Level 4 but which are included under essential personal movement in the present ALR Order include:
 - Limited customary purposes
 - Care of children and others
 - Accessing health services
 - Accessing judicial institutions
 - Leaving New Zealand
 - Relocating home or place of residence in an emergency
 - Going home after isolation or quarantine (or arrival)
 - Caring for pets or other animals
 - Assisting a fellow resident
11. While the list could be expanded to include other activities such as students coming back to their families from hostels, DPMC officials consider case-by-case consideration through the exemptions process is preferable, given the importance for the management of the outbreak of limiting movement. If Ministers were interested in expanding the list of permitted movement, then we would seek a public health report and provide further advice.

Improvements to the exemption process

12. There are two main areas where work is underway to improve the exemption process and ensure it meets the policy intent.

Public-messaging around permitted activities

13. Many requests made by individuals relate to activities that are already permitted under the ALR Order. Strengthening the public-facing information about permitted activities should reduce the number of queries that agencies are receiving.

14. On Tuesday 24 August, the Unite Against COVID-19 website was updated to include a plain language version of the list of permitted personal movements as specified in clause 16 of the ALR Order (see: <https://covid19.govt.nz/travel/domestic-travel/permitted-travel-at-alert-level-4/>).

Process for submitting and considering exemptions

15. Until now, there has been no formal process for submitting a request for an exemption from requirements of the current ALR Order, with requests being submitted through a range of channels, including public-facing government websites and via elected officials channels.
16. While sectors are confident about approaching the relevant agency directly for requests relating to business or service activities and class exemptions, there has not been an obvious point of entry for individuals to request an exemption. We are aware of individuals submitting requests by approaching an elected official or, for example, via the Ministry of Transport public-facing website for requests that are not directly related to transport, but because their request relates to travel or movement.
17. Officials are working to ensure there is a clear and available avenue for individuals to submit their requests to be given appropriate consideration.
18. Prior to submitting a request via email, requestors will be asked to ensure that their reason for an exemption request is not already permitted under the ALR Order and to acknowledge they have read the accompanying explanation of what the Director-General of Health will take into account in considering an application for an exemption. Requestors seeking exemptions for business or service activities and class exemptions will be encouraged to send their requests to the relevant agency directly.
19. Exemption requests received through the channel will be triaged by a team that is being stood up. Any sector, business and class exemption requests received through this point of entry will be re-directed to the relevant agencies. Requests from individuals will be assessed as to whether they are likely to be consistent with the ALR Order and the Act. It is expected these requests will relate mainly to compassionate grounds for exemptions.
20. In all cases, if the request is for an already permitted activity, the requestor will be advised of this. Where it is not likely to be consistent with the purposes of the ALR Order or the Act, this will be explained to the requestor. However, agencies cannot deny the request – these requests, together with the agency assessments, must be considered by the Ministry of Health and must be put to the Director-General of Health for consideration.
21. It is expected that the overall number of exemptions likely to be approved by the Director General will be small, given the importance of limiting activities at Alert Level 4. Officials will monitor this.

The intent of the exemption power

22. The exemption power is in place because it is not possible to identify and address every scenario in which a business, service provider or individual might find themselves.
23. Nonetheless, exemptions can be granted only if the Director-General is satisfied that they are necessary or desirable to promote the purposes of the Act or of the ALR Order, which is to prevent, and limit the risk of, an outbreak of COVID-19.
24. To strengthen the policy intent of the exemption power, further provisions could be added to require the Director-General, before granting an exemption that would permit

further activity, not only to be satisfied that the exemption is necessary or desirable in order to promote the purpose of the Act and ALR Order, but also to have regard to the following factors:

- a) the need to reduce unnecessary movement of people between places or across Alert Level boundaries;
 - b) whether the person(s) seeking an exemption have been classified as a contact, have been at a location of interest or are subject to a section 70 Direction or the extent of public health risk that the proposed activity would otherwise present;
 - c) the advice of relevant Public Service Chief Executives on whether an exemption is the most appropriate way of addressing or resolving the issue at the time when considering an exemption for any business or service provider.
25. Adding these further provisions would ensure that the exemptions support public health objectives. Consideration of (c) follows the approach used with the Ministry of Education to support the provision of educational resources to students.
26. Officials can provide further advice on this as part of follow-up advice on exemptions, including in relation to movement across an Alert Level boundary.

Risks and Issues

27. It is likely that the creation of a public-facing channel for exemption requests will significantly increase the number of requests for exemptions. While clear messaging about permitted activities and the scope of exemptions may mitigate this to some extent, there may be a surge in requests that could distract resources, including public health resources, from the COVID-19 response. It will be necessary to keep the process under review to ensure volumes are manageable.
28. DPMC is working with the Public Service Commission Workforce Hub on resourcing this.
29. A large number of requests could also add to the workload of the Director-General of Health. While some of this additional workload for the Director-General can be managed by a dedicated team reviewing applications, the Director-General is required to consider each application. This could be mitigated by enabling the Director-General to delegate consideration of requests to other specified officials. Ministry of Health and legal advice will be sought on this.
30. Experience tells us that creating an Alert Level boundary results in a large number of additional exemption requests. It will therefore be necessary to ensure there is a clear and efficient process for responding to exemptions in the event of an Alert Level boundary being created. The Department of the Prime Minister and Cabinet is currently working through this with the Ministry of Health and the Ministry of Business, Innovation and Employment.

Equity considerations

31. There may be a perception that businesses, service providers and individuals who have the resources, knowledge of government systems and processes, and contacts within government are more likely to be able to make a request than others. The creation of a public-facing channel for exemption requests will help to address this, together with an ongoing robust approach to requests, reserving exemptions to those anticipated by the ALR Order (those that are necessary or desirable to promote the purposes of the Act or the Order).

Next Steps

32. The new public-facing avenue and team is expected to be in place by Friday 27 August.
33. Officials expect to provide further advice on possible additional provisions to strengthen the policy intent of the exemption-making power and on the process for submitting and considering exemptions in relation to movement across an Alert Level boundary.

Consultation

34. The Ministry of Health, Ministry of Business, Innovation and Employment, Ministry of Transport, and the Crown Law Office were consulted on this paper. The Ministry of Health indicated that it could not provide feedback on the proposal as it currently stands.

Attachments:	
Attachment A:	Power for the Director-General to grant exemptions from the COVID-19 Public Health Response (Alert Level Requirements) Order (No 9) 2021
Attachment B:	Exemptions granted to date

ATTACHMENT A

Power for the Director-General to grant exemptions from the COVID-19 Public Health Response (Alert Level Requirements) Order (No 9) 2021

24 Power for Director-General to grant exemptions from this order

- (1) The Director-General may exempt any class of persons, businesses, services, or goods (or any person, business, service, or goods) from the application of any provision of this order or from the requirement to comply with any provision of this order in accordance with this clause.
- (2) The Director-General may grant an exemption if satisfied that—
 - (a) the exemption is necessary or desirable in order to promote the purposes of the Act or the purposes of this order; and
 - (b) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- (3) The Director-General may impose conditions on the exemption as the Director-General considers necessary.
- (4) An exemption for any specified person, business, service, or goods must be notified in writing to—
 - (a) the applicant; and
 - (b) in the case of an exemption for any specified person, business, or service, the exempt person or business.
- (5) An exemption for any class of persons, businesses, services, or goods must—
 - (a) be published on a publicly accessible Internet site maintained by or on behalf of the New Zealand Government; and
 - (b) be notified in the *Gazette*.
- (6) However, the Director-General need not comply with subclause (5) before an exemption, or an amendment to an exemption, comes into force if satisfied that the exemption or amendment should come into force urgently.
- (7) In that case,—
 - (a) the effect of the exemption (or, in the case of an amendment to an exemption, the effect of the amendment) must be publicly announced before it comes into force; and
 - (b) the Director-General must comply with subclause (5) as soon as practicable after the exemption or amendment comes into force.

ATTACHMENT B

Exemptions granted to date

Person/business/service	Requirement from which exempted	Gazetted?
Construction, building and other related works on residential buildings where people were displaced from their place of residence in the 2021 Buller floods	Exemption from the requirement of Clause 18 of the Order (therefore may operate as an Alert Level 4 business or service)	Y
Onsite Collation and Delivery of Education Resources for Education Entities	Exemption from the requirement to stay at home under clause 15(1) of the Order	
Contactless Pick-up for Students (Excluding Tertiary Education)	Exemption from the requirement to stay at home under clause 15(1) of the Order	Y
Food Services for Tertiary Student Accommodation	Exemption from the requirement in item 10 of Schedule 2 to have systems and processes in place to prevent food and drink from being served for consumption on premises	
Critical Financial Services	Exemption from clause 18 of the Order (therefore may operate as an Alert Level 4 business or service)	Y
New Zealand Paralympic team, including players, coaches, team management and other support staff, who are travelling to Japan for the Paralympics, departing New Zealand between 19 August 2021 and 29 August 2021	Exemption from clause 15 of the Order, for the purpose of permitting essential personal movement to travel domestically and stay in accommodation as part of domestic travel within New Zealand to leave New Zealand for Japan from Auckland airport.	Y
Emirates Leisure Retail (New Zealand) Limited operating under the trading name of Vantage Bar within Auckland International Airport	Exemption from clause 18 of the Order and may operate as an Alert Level 4 business or service in order to sell food and beverages and essential grocery items to customers in transit	No (granted to a specific business)