



Briefing

IMPLEMENTATION OF PRE-DEPARTURE TESTING FOR ARRIVALS TO NEW ZEALAND

To: Hon Chris Hipkins
Minister for COVID-19 Response

Date	7/01/2021	Priority	Urgent
Deadline	8/01/2021	Briefing Number	DPMC-2020/21-408

Purpose

1. On 31 December 2020, you agreed to amend the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (Air Border Order) to require pre-departure testing of those embarking from the United Kingdom (and potentially other high risk locations in the future). Subsequently you directed this should be extended to the United States.
2. You have been briefed by the Ministry of Health seeking your agreement to undertake Ministerial consultation on the draft amendment to the Air Border Order [Health report 20202331 refers]. This briefing provides further advice on the implementation of the requirement, including:
 - a) the requirements of the pre-departure testing regime;
 - b) the impact of the requirement on managed isolation and quarantine (MIQ);
 - c) support available to travellers unable to meet the requirement;
 - d) engagement with airlines in relation to the requirement; and
 - e) compliance and enforcement.

Recommendations

1. **Note** it is proposed the amendment to the Air Border Order contain exemptions from the pre-departure testing requirement limited to:
 - a) children under two;
 - b) individuals with a medical certificate verifying they have been examined within 72 hours of departure and have been unable to undertake a test for medical reasons but do not exhibit symptoms of COVID-19;
 - c) individuals with a medical certificate for past (recovered) cases of COVID-19 where a test shows a positive result, but the individual is no longer considered by a medical practitioner to be infected with COVID-19;
 - d) passengers on flights that have to perform emergency landings or refuelling in New Zealand and where passengers remain airside;
 - e) air crew and international emergency assistance teams as currently exempt from the Air Border Order and/or managed COVID-19 Public Health Response (Isolation and Quarantine) Order 2020;
 - f) diplomatic and consular personnel who are currently exempt from the Air Border Order and/or managed COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 as a result of diplomatic and consular immunity;
 - g) individuals granted permission to enter New Zealand on the grounds of humanitarian reasons, including medical evacuations from the Pacific;
 - h) individuals arriving in New Zealand by air from Antarctica;
 - i) individuals whose journey to New Zealand begins in a country not subject to a New Zealand's pre-departure testing requirement; and
 - j) individuals who are transiting a country subject to a New Zealand pre-departure testing requirement and are there for less than 96 hours.
2. **Note** that RT-PCR test, LAMP or a viral antigen tests will be accepted for pre-departure testing, but not tests processed outside of a laboratory setting.
3. **Note** the Border Executive Board will be accountable for the pre-departure testing regime and provide governance and oversight supported by an inter-agency communications team and external assurance.

- ✓
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- ✗

Disagree with (j)
Who would be transiting through the UK and US and NOT coming from a country at high risk from COVID-19?

4. **Note** that during the transitional period of 15 January to 31 January 2021 MBIE MIQ will help all people holding a Managed Isolation and Allocation System) voucher to find new suitable times where they are unable to board their flights due to the new pre-departure testing orders, after which time they may need to re-enter the normal Managed Isolation Allocation system;
5. **Note** that after the transitional period, MBIE MIQ will continue to help re-allocate MIQ rooms to travellers who tested positive after they have recovered, or who have been tested, but who have not yet received the results, but expect to do so within 24 hours, so they do not need to re-enter the normal Managed Isolation Allocation System;
6. **Agree** that Customs be responsible for checking compliance with the requirement for passengers travelling from specified countries to have evidence of having undertaken a COVID-19 test and achieved a negative result prior to departure for New Zealand. YES NO
7. **Note** that this compliance check would take place at the Customs/Immigration primary processing booth after passengers have had a health assessment.
8. **Note** the draft amendment to the Air Border Order creates an obligation on airlines with passengers entering New Zealand to take reasonable steps to ensure at check-in for the first leg of the journey that the passenger has the approved negative COVID pre-departure test in the specified form, or is subject to an exemption.
9. **Note** MFAT will provide consular assistance to New Zealanders with disrupted travel plans, and in very rare circumstances can provide financial assistance to ensure the immediate safety and well-being of New Zealanders.
10. **Note** officials will assess whether further support is required for New Zealand citizens adversely affected by New Zealand's pre-departure testing requirements over the first weeks of the requirements' operation.
11. **Note** that representatives from the Board of Airline Representatives and Air NZ are now meeting regularly with officials to undertake implementation planning for the new pre-departure testing requirements.
12. **Note** the Ministry of Health has assessed most countries as high-risk and officials recommend waiting to assess the implementation and effectiveness of the pre-departure testing requirement for travellers from the United Kingdom and United States, including issues of equity and impacts on New Zealand Bill of Rights Act rights, before extending the requirement to other countries or routes.

X


I want to see a timetable for extending this to all long haul passengers as soon as possible. CH

13. ^{ss(2)(h)}




14. **Forward** this briefing to the Prime Minister, Minister of Health, Minister of Foreign Affairs, Minister of Justice, Minister of Immigration, Minister of Transport and Minister of Customs for their information.

YES NO



Chappie Te Kani
**Acting Deputy Chief Executive
 COVID-19 Group**

...../...../2020 7/1/2021



Hon Chris Hipkins
Minister for COVID-19 Response

...../...../2020 7/1/2021

Contact for telephone discussion if required:


Name	Position	Telephone	1st contact
Chappie Te Kani	Acting Deputy Chief Executive	ss(2)(a)	N/A
Ben White	Special Advisor	N/A	N/A

Minister's office comments:

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

PRE-DEPARTURE TESTING FOR ARRIVALS TO NEW ZEALAND

Executive Summary

1. Following the decision of Ministers with Power to Act to require people travelling to New Zealand by air to have a pre-departure test for COVID-19, and your further decisions on 31 December 2020 [DPMC-2020/21-407 refers], work has been completed to implement the requirement.
2. You have received advice from the Ministry of Health recommending you undertake Ministerial consultation on a draft amendment to the Air Border Order that would give effect to the pre-departure testing requirement [Health report 20202331 refers]. From 15 January the requirement will apply to travellers from the United Kingdom and United States, with the option of extending it to other countries or long-haul routes in the future. Attachment A shows how the testing requirement would apply to different types of journey to New Zealand – e.g. trips to New Zealand originating in the United Kingdom or United States or transiting those countries, or trips that transit New Zealand.
3. In working through the implementation pathway for travellers required to have a test, operational responsibilities have been clarified. Five workstreams have been identified and lead agencies for each agreed as follows:
 - a) foundations of the testing regime – Ministry of Health;
 - b) interface with the MIQ system – MBIE MIQ;
 - c) hardship support for travellers – MFAT ;
 - d) interface with airlines – Ministry of Transport; and
 - e) compliance and enforcement – Customs.
4. Agency leads will report to the Border Executive Board who will have overall accountability for the pre-departure testing regime.
5. A number of factors may affect the ability of passengers travelling to New Zealand being able to meet the new pre-departure testing requirements. Passengers who do not test negative will be affected. Other factors that need to be considered include the current environment in the United Kingdom and United States and access to approved tests, the impacts of other jurisdictions who are also implementing their own pre-departure testing regimes and the limits around the timing for testing and types of acceptable tests.
6. The requirement will mean some New Zealanders' are unable to legally enter the country.
s9(2)(h)


For many of these this could cause hardship if, for example, they have to purchase a new ticket and/or find accommodation they had not budgeted for at their place of departure. While MFAT offers consular support, financial assistance is

limited. Over the first weeks of the pre-departure testing requirement being in place, officials will monitor the impact of the policy on travellers and assess whether additional hardship support is required.

7. In terms of MIQ bookings, from 15 January to 31 January 2021 MBIE MIQ will help all people holding a Managed Isolation and Allocation System voucher to find new suitable times when they are unable to board their flights due to the new pre-departure testing requirements. After that, MBIE MIQ will continue to help re-allocate MIQ rooms to travellers who tested positive after they have recovered, or who have been tested, but who have not yet received their results.
8. In terms compliance, we recommend NZ Customs be responsible for checking passengers travelling from specified countries have evidence of having undertaken a COVID-19 test and achieved a negative result prior to departure for New Zealand. The compliance check would take place at the Customs/Immigration primary processing booth after passengers have had a health assessment.

Background

9. Following the decision of Ministers with Power to Act to require people travelling to New Zealand by air to have a pre-departure test for COVID-19, and your further decisions on 31 December 2020 [DPMC-2020/21-407 refers], a draft of an amendment to the Air Border Order has been provided to you for Ministerial consultation [Health Report 20202331 refers]. Subject to your agreement, the amendment would come into force on 15 January 2021. The pre-departure testing requirement will initially apply to travellers to New Zealand from the United Kingdom and United States from 15 January 2021 through a Gazette notice issued by the Director-General of Health.
10. The Ministry of Transport, MBIE MIQ, Immigration NZ, Customs NZ, Ministry of Health and the Department of Prime Minister and Cabinet have worked through how the requirement will be implemented and operational responsibilities have been clarified.

Overall inter-agency framework for pre-departure testing

11. Implementation of pre-departure testing requirements for travellers to New Zealand involves a number of government agencies. Broadly, these issues can be grouped into five key workstreams:
 - a) foundations of the testing regime;
 - b) interface with the MIQ system;
 - c) hardship support for travellers;
 - d) interface with airlines; and
 - e) compliance and enforcement.
12. Enabling and supporting all of these workstreams is an all-of-government communications plan. This will ensure consistent, timely and accessible messaging that provides the key information travellers need to understand what is required of them for pre-departure testing before they travel to New Zealand.

13. The workstream dealing with the foundations of the testing regime is led by the Ministry of Health and covers who the requirement applies to, exemptions, approved tests, evidential requirements and evaluation. These legal requirements will be provided for by the amendment to the Air Border Order.
14. We expect there will still be a number of travellers who are not able to meet the requirements in time, and who will need support. Two workstreams under the inter-agency framework are focussed on managing the impacts of this and providing support to travellers – interface with the MIQ system (led by MBIE) and hardship support for travellers – led by Ministry of Foreign Affairs and Trade (MFAT).
15. Engaging early with airlines so they, in turn, can work with their customers to make them aware of the new requirement is critical. This is covered by the interface with airlines workstream led by the Ministry of Transport.
16. Finally, when travellers arrive in New Zealand, an appropriate enforcement and infringement system needs to be place. This is covered by the enforcement workstream led by New Zealand Customs.

Oversight and governance arrangements for implementation of pre-departure testing

17. The leads for these work-streams will report to the Border Executive Board who will be accountable for the pre-departure testing regime. The Board will provide governance and oversight and will be supported by an inter-agency communications team, programme support, and external assurance around the process, to ensure the end to end system is working well. Such a role is one of the reasons the Border Executive Board was formed; to ensure inter-agency programmes like this have effective whole of system governance and accountability.

Workstream 1: Foundations of the testing regime

Exemptions to pre-departure testing requirement

18. As with testing requirements for people in MIQ, it is necessary to include exemptions in the Air Border Order to cover a range of circumstances in which it is unreasonable to expect a person to undergo a test, or – in the case of diplomatic or consular personnel – doing so would breach international and domestic law. It is proposed exemptions from the pre-departure testing requirement be limited to the following:
 - a) children aged two years and under;
 - b) individuals who can present a medical certificate verifying they have been examined no earlier than 72 hours prior to departure and have been determined to be unable to undertake a test for medical reasons but do not exhibit symptoms of COVID-19;
 - c) individuals with past (recovered) cases of COVID-19 who have a positive 72 hour or less test result, and a medical certificate for showing that the individual is no longer considered by a medical practitioner to be infectious with COVID-19;
 - d) passengers on flights that have to perform emergency landings or refuelling in New Zealand and where passengers remain airside;

- e) air crew and international emergency assistance teams as currently exempt from the Air Border Order and/or managed COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 through an exemption granted by the Director-General of Health;
 - f) diplomatic and consular personnel who are currently exempt from the Air Border Order and/or managed COVID-19 Public Health Response (Isolation and Quarantine) Order 2020;¹
 - g) individuals granted permission to enter New Zealand for humanitarian reasons, including medical evacuations from the Pacific;
 - h) individuals arriving in New Zealand by air from Antarctica;
 - i) individuals whose journey to New Zealand begins in a country not subject to New Zealand's pre-departure testing requirements; and
 - j) individuals who are transiting a country subject to a New Zealand pre-departure testing requirement and are there for less than 96 hours.
19. The requirement for historic cases of COVID-19 to be tested again 72 hours prior to departure, and then undertake a medical examination to confirm they are no longer infectious, places an additional burden on those individuals, including a financial cost. However, this is necessary to ensure the individual is not exhibiting symptoms of a new, and therefore infectious, case of COVID-19. ✓
20. The amendment also gives a very limited power to the Director-General of Health to issue a class exemption from the 72-hour element of the testing requirement for people transiting through New Zealand only.
21. Finally, the amendment provides for a situation where an individual is tested within 72 hours of their scheduled departure, but the flight is delayed or cancelled and re-booked, or their test results do not come in time. If their rescheduled or rebooked flight departs within 24 hours of their previous flight, the 72-hour requirement will be considered to be a 96-hour requirement, to ensure they don't need to undertake another test in the meantime. ✓
22. Officials have also considered the issue of individuals not being able to access an approved test in the country they are departing from. We understand this may be an issue in some countries in Africa, Asia and the Pacific. Officials propose not including an exemption in the Order and relying on the provision for you as the Minister of COVID-19 Response to grant a class exemptions for people from identified countries if they cannot access approved tests to meet pre-departure testing requirements. MFAT will provide advice on this if required. ✓

¹This exemption is required by the Vienna Conventions on Diplomatic Relations and Consular Relations which are incorporated into New Zealand domestic legislation. These mandate the inviolability of diplomatic and consular personnel, and immunity from the criminal and civil jurisdiction. Together these privileges and immunities limit New Zealand's ability to enforce domestic law on diplomatic and consular personnel. However diplomatic missions have a duty to respect local laws, and MFAT will strongly encourage compliance with pre-departure testing in the same way they are encouraged to enter managed isolation on arrival or to self-isolate in accordance with Ministry of Health guidelines. Compliance by foreign diplomats with New Zealand's COVID-19 health measures has been high, with no significant issues to date.

Ministry of Health advice on acceptable test types

23. New Zealand's management of COVID-19 is based on supporting the Elimination Strategy, and as such it currently implements onshore PCR testing and 14-day managed quarantine and isolation. Pre-departure testing is a protection in addition to these existing border measures.
24. Many countries and airlines already require evidence of a negative PCR COVID-19 pre-departure test as a prerequisite to travel, and any traveller transiting through one of these countries on their journey to New Zealand should seek advice and obtain the correct test as specified by their country of transit.
25. There exist a wide variety of tests for COVID-19, some detect the virus directly (genetics and antigens) and some detect if a person has previously been exposed to the virus (antibodies). The pre-departure test that will be required by New Zealand is the former of these; to detect if any traces of the SARS-CoV-2 virus is present within a person that intends to travel to New Zealand. The aim of pre-departure testing is to minimise the number of people who are infectious with COVID-19 from travelling to New Zealand. Individuals who contracted COVID-19, but recovered, may continue to test positive for viral genetic material but are not considered to be infectious.
26. Where an individual has a positive pre-departure test but is known to have recovered from COVID within the previous three months they must have an additional test no more than 72 hours prior to their departure. If that test is positive, they must also provide a medical certificate that confirms that they are no longer considered contagious.
27. There are a variety of genetic and antigen tests for SARS-COV-2 and they all differ in their sensitivity, specificity and speed. At this point in time, we recommend against being overly prescriptive in dictating which genetic or antigen COVID-19 test satisfies the requirement as a robust (fit-for purpose) pre-departure test.
28. Modelling suggests that pre-departure tests are most effective if conducted within 72 hours of the departure time.
29. Under the proposed amendment to the Air Border Order, the Director-General of Health will prescribe through a Gazette notice what type of test is required to meet pre-departure testing requirements. ✓
30. There are two tiers of testing that the Ministry of Health has assessed as acceptable for pre-departure testing and will be Gazetting as appropriate prior to pre-departure testing requirements coming into force:
 - a) Tier 1 – conducting a RT-PCR test for SARS-CoV-2. This is the test that is used across New Zealand and deemed the most reliable test for early detection of the virus.
 - b) Tier 2 – conducting a LAMP or a viral antigen test. These tests are deemed of sufficient accuracy and sensitivity for a pre-departure, though lower than PCR tests primarily because upon arrival in New Zealand nasopharyngeal swabs and RT-PCR testing will be conducted at Day 0/1 and/or Day 3.
31. Samples for testing can be obtained via nasopharyngeal, anterior nasal, oral, sputum, or saliva, which may be conducted in-home or by a trained sampler, but must be processed

by a laboratory recognised in the country of origin as authorised or accredited to conduct tests. The testing laboratories should be in the position to issue a dated report.

- 32. Antibody tests and antigen home-test kits that return results without being processed by an accredited lab are not accepted tests because:
 - a) an antibody test is not a diagnostic test for COVID-19; and
 - b) the "at home" antigen kit will not provide a test record of sufficient fidelity to meet the requirements of pre-departure testing, specifically, the ability for airline check-in staff and New Zealand customs staff to identify the negative test result.
- 33. Individuals that have been vaccinated will be required to comply with the pre-departure requirements on the basis that the vaccines do not have 100 percent efficacy and onward transmission of COVID-19 from vaccinated people has not yet been confirmed.

Applying the pre-departure testing requirement to other routes/countries

- 34. Work to date has aimed to identify countries considered low risk of importing SARS-CoV-2 into New Zealand, to inform policy decisions around quarantine free travel. This analysis has used data such as the incidence rates per population and whether the rates are increasing or decreasing. For example, the Ministry of Health's Country Risk Assessment Tool (CRAT) uses these measures as well as the absolute number of cases. As the map below shows, this analysis identifies almost all countries as high risk.^{s6(a)}

This assessment is dependent on the accuracy of reporting, which varies internationally. Therefore, the CRAT is only one component of the analysis for determining country risk.

Country Risk Assessment Tool 2020-12-28

s6(a)



35. There is a large variation in genome sequencing effort of SARS-CoV-2 across the globe. There are two primary reasons why whole genome sequencing is used – to aid contact tracing and to monitor the evolution of the virus as it changes.
36. Countries that sequence more virus will detect more viral variants. It is therefore important that the level of sequencing effort of any given country is not used as a proxy for risk of importing new viral variants into a country.
37. The Ministry of Health is working with DPMC to reconcile other existing country risk assessment models and this is being reviewed by a statistical advisory group. A preliminary review has identified some potential small improvements to the CRAT.
38. If extending pre-departure testing is implemented, given that most countries are assessed as high risk, the Ministry of Health recommends that the precautionary and pragmatic approach is to extend this measure to all travellers apart from those that have been solely in jurisdictions assessed as low risk for two weeks before departure in the Pacific Islands (Fiji, Cook Islands, Niue, Samoa, Tokelau, Tonga, Kiribati, New Caledonia, Tuvalu, Marshall Islands, Vanuatu, Federated States of Micronesia, Niue, Solomon Islands, Nauru, and Palau) and in Australia.²
39. The list of countries exempt from pre-departure testing will require ongoing review.^{s6(a)}



40. Officials recommend waiting to assess the implementation and effectiveness of the pre-departure testing requirement for travellers from the United Kingdom and United States, including equity issues and impacts on New Zealand Bill of Rights Act rights, before extending the requirement to other countries or routes.

How the effectiveness of the pre-departure testing requirement will be assessed

41. The Ministry of Health will collect and analyse data on positive results from day 0/1 and day 3 tests relative to the number of inbound travellers. In addition, during February 2020 the Ministry of Health will undertake an audit of the validity of pre-departure test evidence provided by passengers to evidence compliance. This will be completed as part of a wider Ministry of Health-led review of testing measures at the border to be undertaken in early March once there is sufficient data following the changes being implemented this month.

Workstream 2: Impact on MIQ

42. The new pre-departure testing requirements will impact some people's ability to travel, with flow-on implications for their MIQ bookings (MIAS vouchers) and utilisation of MIQ rooms. MBIE MIQ is developing the necessary communications to ensure people with

² We note that this list does not include a small number of Pacific jurisdictions currently experiencing significant COVID-19 outbreaks: Papua New Guinea, French Polynesia.

³ ^{s6(a)} 

vouchers are aware of the new requirements and the process changes required where people are unable to travel and therefore unable to use their MIAS vouchers.

43. An average of 1000 people a week are scheduled to arrive in New Zealand from the United Kingdom and the United States over the next two weeks. The first affected flight is scheduled to leave the United Kingdom in the early hours of 13 January, leaving a narrow window for those travellers to obtain a test result.
44. We are unable to forecast how many people will be unable to meet the pre-departure requirements at this time, but anticipate it could be a sizeable number, particularly through the transitional period of 15 January 2021 to 31 January 2021.
45. Initially, during the transitional period, MBIE MIQ proposes to help any traveller affected by the new requirements by working with individuals to find other suitable MIQ spaces once they can comply. At this stage we do not anticipate a need to ring-fence rooms for people whose travel is delayed by the pre-departure test requirements, or to re-purpose emergency allocation rooms. Once we are clearer about how the new policy is impacting travellers and MIQ allocations, we may look at holding back some of the spaces freed up by removing duplicate bookings to re-accommodate affected people (rather than releasing these rooms on the Managed Isolation Allocation System). The changes will require manual reallocation, which will have resourcing implications.
46. From 1 February 2021, once the new pre-departure testing requirements have had time to embed, we will continue to support those who are unable to board their planes because they have either:
 - a) tested positive (so they can only travel once fully recovered); or
 - b) taken all reasonable steps to be tested but are still awaiting results (and where the result is expected to be received within 24 hours – this is consistent with the new date rules for MIAS bookings).
47. From 1 February 2021, while MBIE MIQ will endeavour to be as helpful as possible to other affected travellers not meeting the criteria above, in most cases they will need to obtain new vouchers through the normal allocation system, along with rebooking flights. The emergency allocation will provide for exceptional cases where urgent travel is required

Communicating the changes

48. MBIE MIQ will provide a variety of channels for travellers and check-in staff to engage with them around the clock.
49. Among other things, MBIE MIQ is contacting everyone who is scheduled to travel within the relevant time frame to ensure they know about the pre-departure test requirements through a push notification, along with airlines and overseas posts. A dedicated phone number is available to provide support for people affected by the new requirements, and a dedicated email address is being established. Information on the policy along with FAQs has been on the MIQ website since 6 January and is being regularly updated.
50. We anticipate the initial implementation will be resource intensive as we expect to receive a high number of queries until such time as the new process is fully embedded. As an indication of likely volumes, the number of calls to the MIQ service centre increased from

a norm of about 400 calls a day to 1000 calls on 5 January 2021. We will monitor the resource implications and report back to you as necessary.

Workstream 3: Hardship support for affected travellers

51. It is a realistic possibility that pre-departure testing requirements for travellers to New Zealand will impact New Zealand citizens and permanent residents' ability to enter New Zealand. ^{s9(2)(h)}
- [REDACTED]
52. MFAT is responsible for providing advice and consular assistance to distressed New Zealanders offshore. According to MIQ data, approximately 1000 travellers will arrive in New Zealand from the United Kingdom and United States each week over January and February. MFAT expects to receive a substantial increase in enquiries from New Zealanders overseas whose travel plans may be disrupted because:
- a) they were unable to obtain the results of an approved test from an approved provider within 72 hours of departure (strict lockdowns will complicate accessibility, as will Monday and Tuesday departures given limited availability of weekend testing in some jurisdictions);
 - b) their test returned a positive result;
 - c) the inability to travel as a result of pre-departure testing requirements has resulted in breaching visa conditions in the jurisdiction of departure or transit;
 - d) the inability to travel as a result of pre-departure testing requirements has resulted in financial, physical or mental hardship; or
 - e) they were unaware of the new pre-departure testing requirements.
53. MFAT can support New Zealanders who are unable to meet the pre-departure testing requirements by directing them to the appropriate websites or lead agencies to clarify or answer questions about testing requirements, and to rebook flights and MIQ. MFAT can also provide information about local testing providers. MFAT is unable to influence testing providers to prioritise New Zealanders in terms of access and timeliness for test results.
54. The SafeTravel.govt.nz website provides advice for New Zealanders experiencing financial difficulties. In very rare circumstances, limited financial assistance may be provided to New Zealanders in genuine hardship, which they must agree to repay in full, within 30 days.
55. It is possible that New Zealand's citizens that must delay their travel to New Zealand for the above reasons and suffer significant hardship may require additional support to what MFAT can offer. Officials will assess whether further support is required over the first weeks of the requirements' operation and provide further advice as appropriate.

Workstream 4: Airline engagement on pre-departure testing requirements

56. The Ministry of Transport is leading engagement between Air NZ, the Board of Airline Representatives of New Zealand (BARNZ) and relevant government agencies on pre-departure testing.
57. Representatives from the Ministries of Health, Foreign Affairs and Trade and Transport, Customs, Immigration NZ, DPMC COVID-19 Group and MBIE/MIQ are meeting on a daily basis, where necessary, with Air NZ and BARNZ to progress implementation of the new pre-departure testing requirements.
58. The focus of the engagement is to:
 - a) support airlines to understand their legal requirements and what will be required of their customers under the new pre-departure testing regime;
 - b) support airlines in making their customers aware of the new requirements and to enable compliance, including through the provision of key messages and FAQs; and
 - c) understand where operational challenges are likely to arise during implementation and to mitigate these in advance to the extent practicable.
59. Close and regular engagement between agencies, Air NZ and BARNZ will continue after the new requirements come into effect to enable officials to monitor and understand how the new requirements are bedding in.

Workstream 5: Compliance and enforcement

60. NZ Customs have agreed they will be responsible for checking compliance with pre-departure testing requirements at the air border. The compliance check would take place at the Customs/Immigration primary processing booth after passengers have had a health assessment. To enable Customs to carry out this role, Customs officers would be authorised as enforcement officers under the COVID-19 Public Health Response Act 2020 by the Director-General of Health. Preparations for this are underway.
61. In terms of evidence of a negative test result, under the amendment to the Air Border Order, the Director-General of Health can specify through a Gazette notice what evidence is required.
62. Several options for the compliance check have been considered each with different implications for assurance and resourcing (see Attachment A for details). The recommended option is to check the arrival card and to then inspect all testing forms of passengers falling under the pre-departure test requirement. It is estimated that sighting and checking all documents will, at a minimum, double processing times at the Customs/Immigration booth to about 3-4 minutes per passenger. While this option is more time-consuming and resource intensive in comparison to other options, it will ensure the government begins with a high level of assurance over meeting the new requirements, and gains good information on the level of compliance, that in turn can inform a future review of processes

63. Some impacts of the proposed regime on resourcing and processing times will not become clear until it is implemented, e.g. the difficulties and costs of dealing with forms and certificates in different languages, and the extent to which assistance might be required from Health officials to deal with difficult and complex cases. Customs will have better information on the impacts on passengers and agency resourcing a week or so after implementation.
64. Noting the resource implications and impact on passenger processing times, Customs' recommended option is to check all arrival cards and to sight evidence of testing in all cases, at least in the initial phase of implementation. This will ensure the government begins with a high level of assurance over meeting the new requirements, and gains good information on the level of compliance, that in turn can inform a future review of processes.

Enforcement

65. Arriving in New Zealand without evidence of a negative approved test will be an infringement offence under the COVID-19 Public Health Response Act 2020 (the Act) unless a person is exempt from the requirement (see above). We note the infringement fee of \$300 or fine upon conviction of \$1,000 set in the Act may not provide much incentive for people to meet the pre-departure testing requirement relative to the cost of a PCR test (understood to be NZ\$300-400 in London). Officials will monitor the appropriateness and effectiveness of the infringement regime as set out in the Act. The planned amendment to the Act to be progressed in 2021 may provide a vehicle to reconsider the infringement settings to create a greater incentive for compliance with the pre-departure testing regime.
66. We are considering how non-compliance detected at New Zealand's border should be approached, noting that while there can be a punitive consequence where requirements have been breached, the principal objective of the at-border compliance regime should be to reinforce and encourage compliance with pre-departure testing.
67. The compliance regime has to cover behaviours ranging from deliberate circumvention (for example falsifying forms or test results) down to the merely careless (for example losing the test certificate during travel). The combination of the infringement regime, the limited obligation on airlines and the communications and engagement approach should mean non-compliance at New Zealand's border should be low. As with New Zealand's response to COVID-19 to date, we expect enforcement officers under the Act to exercise discretion in the application of Orders and not punish people who may have a reasonable excuse for non-compliance (such as having lost their certificate).
68. The principal legislation provides for an infringement fee of up to \$300 for specified offences against the Air Border Order (ABO). However, no infringement notice issuing system has been established for the enforcement of the ABO. While Customs has policies, procedures and IT systems for issuing and administering infringement notices under its own legislation, these would have to be adapted to issue notices under the ABO. Customs is undertaking work to understand the changes necessary and the costs and is working with other agencies on the design and administration of an infringement regime for pre-departure testing. Customs will advise Ministers as required.
69. Consideration would need to be given to prosecuting serious non-compliant behaviour (e.g. falsification of a testing document). This would be the only option in the first two weeks of the order coming into force and until an infringement regime is in place. We are exploring which agency is best-placed to do this.

- 70. Officials recommend that consideration be given to the use of infringement notices across the range of offences in the Air Border Order as part of a comprehensive compliance and enforcement strategy and to establish one central, across-government, infringement system.
- 71. Customs notes that following implementation of pre-departure testing requirements from 15 January 2021 it will be able to collect information from interactions with passengers and document inspections. This will inform analysis of the nature and level of non-compliance which can then inform how the range of education, compliance and enforcement processes should be adjusted to respond.

Crown Law Office advice on human rights implications

s9(2)(h)



s9(2)(h)



Consultation

75. The content of this paper has been developed by the Ministry of Health, Ministry of Transport, MBIE MIQ, Ministry of Foreign Affairs and Trade and Customs New Zealand. The Crown Law Office have provided advice and the Ministry of Justice was consulted.

Communications

76. An interagency communications team has been working to develop and align communications, including website content and FAQs.
77. Information about the requirements will be available from all relevant government websites including the Ministry of Health, MIQ, Immigration NZ, SafeTravel, Ministry of Transport and the www.covid19.govt.nz website. The www.covid19.govt.nz website acts as the "front door" and single source of truth for all overarching information, with agency websites carrying more detailed information and updates relevant to their particular areas and audiences. The same approach is taken to FAQs.
78. Following the initial announcement in late December 2020, a website update and initial set of FAQs were published on 7 January. FAQs were provided to iwi/Maori, government, local government, business and across the health sector. These updates provide a basic level of information. A push notification was also sent on 7 January to all travellers who hold vouchers through the MIQ system.
79. Key areas of public interest not yet addressed as information is still evolving include: exemptions, solutions for travellers who do not receive their results within the 72 hour window and support for those facing financial burdens due to testing requirements.
80. Websites and FAQs will be updated iteratively over the coming days as information becomes available.

Attachment A

Table of journey types where pre-departure testing will apply from 15 January 2021

Type of journey	Do I need to get a pre-departure test?
I am flying direct from the United Kingdom or United States to New Zealand (there are only direct flights to New Zealand from the United States at this time).	Yes, you must get a pre-departure test within 72 hours of the scheduled departure time of your international departure.
My journey to New Zealand starts in the United Kingdom or the United States (i.e. the first leg), with transit legs in other countries (not the United States or United Kingdom) before I arrive in New Zealand.	Yes, you must get a pre-departure test within 72 hours of the scheduled departure time of your first international departure. You also must check any pre-departure travel requirements imposed by other countries you will be travelling through on your way to New Zealand. They may be different from the New Zealand requirements.
My journey to New Zealand starts in a country which is not yet subject to New Zealand's pre-departure testing requirements, and then I will be transiting through the United States or the United Kingdom (and possibly other transit stops) before I arrive in New Zealand.	If you are in a specified country (United Kingdom or United States) for longer than 96 hours during your journey, you will need to be tested before leaving that country. If you are transiting and are there for less than 96 hours, you do not need to be tested. You also must check any pre-departure travel requirements imposed by other countries you will be travelling through on your way to New Zealand. They may be different from the New Zealand requirements.
I am travelling to New Zealand, but I will only be transiting airside through New Zealand, not staying.	Yes, you must get a pre-departure test within 72 hours of the scheduled departure time of your first international departure and meet the New Zealand requirements, unless the Director General of Health has said the testing timeframe in your country of arrival should apply.

Attachment B

Options and implications for compliance processes at New Zealand's border

1. Currently Customs/Immigration primary processing takes 90 seconds on average for each passenger. At present a passenger may take up to two hours to go through all government processes on arrival at Auckland International Airport (as compared to pre-COVID-19 average processing time of less than 45 minutes). The compliance check for pre-departure testing will add to the time it takes to process passengers, as each officer will need to ask additional questions and check an additional document (which will not be in a standard format) for specific information required to confirm the test and the result.
2. The potential impacts of options are dependent on the staff resources that Customs has available. Reducing the impact on passengers would require higher staffing levels. Customs may need to move back to the airport staff currently redeployed on economic recovery initiatives and administering and enforcing the Maritime Border Order (MBO). This in turn would impact on the cost to the Crown of the MBO as Customs would need to draw down on the financial contingency set aside to recruit and train additional staff to maintain agreed standards for MBO compliance.
3. The expected average additional processing time per passenger has been estimated based on three compliance check scenarios:
 - a) Check of Arrival Card only. The current Arrival Card requires passengers to answer questions on COVID-19 testing, and to list countries visited on recent travel. If following a check of the Arrival card it is considered necessary to check further documents/evidence they would be sent to the (secondary processing) search area for further intervention (and any potential enforcement action - for example an infringement notice). For processing compliant passengers this will have minimal impact as the arrival card check is part of the current process. It will impact on secondary processing at the search area, but this will be dependent on the level of non-compliance.
 - b) Following the arrival card check, Customs would also inspect all passengers' testing forms – we estimate that sighting and checking all documents will, at a minimum, double processing times to about 3-4 minutes per passenger.
 - c) Customs to inspect testing forms on a sampling basis – impacts will depend on the size of the sample required but will fall somewhere between options a and b.
4. Noting the resource implications and impact on passenger processing times, Customs' recommended option is to check all arrival cards and to sight evidence of testing in all cases (option b), at least in the initial phase of implementation.