

Briefing

CLASS EXEMPTION FROM PREDEPARTURE COVID-19 TESTING WHERE TESTING IS NOT POSSIBLE

To: Hon Chris Hipkins
Minister for COVID-19 Response

Date	21/01/2021	Priority	Urgent
Deadline	22/01/2021	Briefing Number	DPMC-2020/21-453

Purpose

This briefing recommends that you grant a class exemption from the requirement to have predeparture testing (PDT) for persons who depart from countries that cannot provide the COVID-19 tests as required by New Zealand. The class exemption is made under clause 26 of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (the Air Border Order).

Recommendations

1. **Note** that there are some countries that are specified places for the purposes of requiring PDT where it has been assessed by the Ministries of Health and Foreign Affairs and Trade that testing in a manner acceptable to New Zealand is not possible.
2. **Note** that under clause 26 of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 you may exempt any person or class of persons from the requirement to comply with any provision of the Air Border Order.
3. **Note** that under clause 26 of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 you must take into account the advice of the Director-General of Health when deciding to grant an exemption and what, if any, conditions should be imposed.

4. **Note** that officials, on the Director General's advice, recommend the following conditions for travellers:


- a) they obtain a certificate from a suitably qualified health practitioner (or a person who is registered or licensed as an equivalent health professional overseas) no more than 72 hours before the journey begins, that confirms they do not have symptoms which indicate that they are likely to transmit COVID-19; and
- b) they produce this certificate when requested by 1 or more of the following:
 - a health protection officer;
 - a staff member or representative of the relevant air carrier;
 - an immigration officer; or
 - an enforcement officer;
- c) they are transferred as immediately as practical to a MIQF for Day 0/1 COVID-19 testing once the necessary border entry procedures have been completed.


5. **Sign** the Exemption Notice (Appendix 1) which grants a class exemption from clause 8(2A) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 for persons returning to New Zealand who departed from the countries listed at Attachment 1.

YES NO

6. **Approve** that the Exemption Notice be published on the Ministry of Health internet and be notified in the Gazette.

YES NO


Arati Waldegrave
Head of Strategy and Policy
20/1/2021


Hon Chris Hipkins
Minister for COVID-19 Response
23/1/2021

Contact for telephone discussion if required:

Name	Position	Telephone		1st contact
Arati Waldegrave	Head of Strategy and Policy	s9(2)(a)	s9(2)(a)	✓
Rachel Sutherland	Special Advisor	N/A	s9(2)(a)	

Minister's office comments:

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

Proactively Released

CLASS EXEMPTION FROM PREDEPARTURE COVID-19 TESTING WHERE TESTING IS NOT FEASIBLE

Purpose

1. This briefing recommends that you grant a class exemption from the requirement to have predeparture testing (PDT) for persons who depart from countries that cannot provide the COVID-19 tests as required by New Zealand. The class exemption is made under clause 26 of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 (the Air Border Order).

Background

The Problem

2. The COVID-19 Public Health Response (Air Border) Order (No 2) 2021 came into force at 11:59 pm, 15 January 2021. This amended the Air Border Order to require PDT for travellers from specified places. PDT commenced with specifying the UK and USA. Subsequently, officials have progressed work towards a global roll-out of PDT.
3. The issue is that, with the global roll-out, some specified countries do not have readily available COVID-19 tests as required by New Zealand. Therefore, to enable New Zealanders to return home from those countries, it is necessary to provide an exemption.

The Policy Agreement

4. The policy for this approach was contained in the briefings:
 - a) *Implementation of Pre-departure Testing for Arrivals to New Zealand* (DPMC-2020/21-408, para 22 refers);
 - b) *Update on Implementation of Pre-departure Testing for Arrivals to New Zealand* (DPMC-2020/21-427 refers); and
 - c) *Process for exempting places from pre-departure testing: complexities and risks* (HR-20210051 refers).

The Process to Assess Countries to be Exempted from PDT for Pragmatic Reasons

5. Officials from the Ministry of Health (the Ministry) and the Ministry of Foreign Affairs and Trade (MFAT) have assessed some 150 COVID-19 at-risk countries and territories to determine whether PDT to the standards acceptable to New Zealand, is practical for travellers. This work commenced with MFAT seeking testing information directly from its network of international posts. The survey assessed whether:
 - RT-PCR tests are available and there is reasonable accessibility

- Other COVID-19 tests are available and there is reasonable accessibility
 - Accredited laboratories are available for doing the tests
 - Test results are likely to be available within 72 hours.
6. MFAT does not have active sight on the domestic policy settings for some 30+ countries and territories. While these countries will be captured in the global roll-out of PDT, there is no information to justify an exemption. The Elimination Strategy for COVID-19 leads to the default policy position to not exempt these.
7. For the 150+ countries and territories assessed, some information was limited or not available. Again, the default is to not exempt these merely on those grounds. For other responses some measure of judgement is required. For example, there may only be a few accredited laboratory(s) available in a country, but proximity to the (main) international airport was considered to provide reasonable access.
8. In conclusion, to commence the global implementation of PDT, the Ministry of Health recommends that there be 12 exempt places in addition to those you already agreed to exempt. Attachment 1 contains a draft notice for signature, and this lists those 12 countries.
9. The Ministry of Business, Innovation & Employment have advised that this exemption may impact only a very small number of people. Analysis of passenger volumes whose continuous ticketed journey originated from the proposed list of exempt countries showed that, since 20 October 2020, there have been s9(2)(a) arrivals embarking from these countries:
- Kenya: 21
 - Myanmar: 11
 - Slovenia: s9(2)(a)
 - Albania: s9(2)(a)
10. As the policy of requiring PDT is operationalised, actual COVID-19 testing experiences from travellers will progressively build-up our global intelligence. Accordingly, we will advise you if further exemptions are necessary. Further advice may follow.

The Exemption is a clause 26 Notice

11. Under clause 26 of the Air Border Order you may exempt any person or class of persons from the requirement to comply with any provision of the Air Border Order if you are satisfied that:
- a) the exemption is necessary or desirable in order to promote the purposes of the COVID-19 Public Health Response Act 2020 or the purposes of the Air Border Order; and
 - b) the extent of the exemption is not broader than is reasonably necessary to address the matters giving rise to the exemption.

Public Health Advice is that Conditions be Applied

12. When deciding whether to grant the exemption and what (if any) conditions to impose, you must take into account the Director General's advice on the public health implications. The Director General's advice is that the exemption meets the purpose of the Air Border Order, but that conditions are needed.
13. If no conditions are put in place, then there is the potential for exemptions to undermine the whole PDT regime to the detriment of the Elimination Strategy for COVID-19. On this basis, the following conditions are recommended for travellers:
 - a) they obtain a certificate from a suitably qualified health practitioner (or a person who is registered or licensed as an equivalent health professional overseas) no more than 72 hours before the journey begins, that they do not have symptoms which indicate that they are likely to transmit COVID-19; and
 - b) they produce this certificate when requested by 1 or more of the following:
 - a health protection officer;
 - a staff member or representative of the relevant air carrier;
 - an immigration officer; or
 - an enforcement officer;
 - c) they are transferred as immediately as practical to a MIQF for Day 0/1 COVID-19 testing once the necessary border entry procedures have been completed.

There may be some implementation challenges

14. Although the number of travellers from the exempted countries is likely to be small, there may be some implementation challenges with operationalising the new exemption. A number of the countries to be exempted are not on traditional international air routes, and ticketing could be broken (i.e. tickets booked separately from the port of embarkation to an international hub, with a single ticketed journey from the hub to NZ). This could make it difficult, for airline staff for example, to track or verify that the journey started in an exempted country. This may increase the risk that a passenger will be denied boarding if, for example, they are not carrying the correct documentation.
15. To support implementation, and to mitigate potential challenges to the extent possible, communications material (including online FAQs) are being updated to advise affected travellers about the new exemption and to be clear about what they need to do, and the documentation they will need to carry, to support validation of their ability to travel under the exemption. MFAT will also work with Posts to provide updated advice to affected travellers as appropriate. Updated guidance for airlines has also been developed and will be shared with Air New Zealand and the Board of Airline Representatives of NZ (to share with other airlines) if the exemption is agreed to. Airlines will need to update their systems and check-in staff.

Consideration of the New Zealand Bill of Rights Act

16. Granting this class exemption is consistent with New Zealand's Bill of Rights Act 1990 obligation to New Zealanders who are overseas by allowing them to return home from a COVID-19 risk country where PDT to the New Zealand standard is not possible.

Elimination Strategy for COVID-19

17. Granting this exemption is also consistent with the Elimination Strategy for COVID-19. The first Health Response Pillar "Keep it Out" places emphasise on testing at the NZ border, and this requirement remains and has been bolstered by Day 0/1 COVID-19 testing.

Next Steps

18. Once you have signed the attached Exemption notice, it will be lodged with the Gazette office and the website and FAQs will be updated. MFAT will provide updates through its consular network and guidelines for the airlines will also be updated by the Ministry of Transport.
19. DPMC's communications team will work with your office on any proactive announcements.

Attachments:	
Attachment 1:	Exemption Notice

ATTACHMENT 1: EXEMPTION NOTICE

Exemption of Persons from Clause 8(2B) of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020

Pursuant to clause 26 of the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 ("Order"), I, Hon Chris Hipkins, Minister for COVID-19 Response, having taken into account the advice of the Director-General of Health, declare that the following class of persons who are returning to New Zealand having started their journey from one of the following places:

- Albania
- Belize
- Dominica
- Kenya
- Laos
- Montenegro
- Myanmar
- Slovenia
- St Kitts and Nevis
- St Vincent and the Grenadines
- Tajikistan
- Turkmenistan

who satisfy the following criteria:

- a) they obtain a **certificate** from a suitably qualified health practitioner (or a person who is registered or licensed as an equivalent health professional overseas) no more than 72 hours before the journey begins confirming they do not have symptoms which indicate that they are likely to transmit COVID-19; and
- b) they **produce** this certificate when requested by 1 or more of the following:
 - a health protection officer;
 - a staff member or representative of the relevant air carrier;
 - an immigration officer; or
 - an enforcement officer;

are exempt from clause 8(2B) of the Order.

All persons exempted from clause 8(2B) of the Order must be transferred as immediately as practical to a MIQF for Day 0/1 COVID-19 testing once the necessary border entry procedures have been completed on arrival to New Zealand.

The exemption will begin at 11.59pm on 25^h January 2021.

Dated at Wellington this 22nd day of January 2021.

Hon CHRIS HIPKINS, Minister for COVID-19 Response.

