



## **COVID-19 Public Health Response (Alert Level Requirements) Order (No 3) 2021**

This order is made by the Minister for COVID-19 Response under section 11 of the COVID-19 Public Health Response Act 2020 in accordance with section 9 of that Act.

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**Order****1 Title**

This order is the COVID-19 Public Health Response (Alert Level Requirements) Order (No 3) 2021.

**2 Commencement**

This order comes into force at 11.59 pm on 22 February 2021.

**Part 1****Preliminary provisions****3 Purpose**

The purpose of this order is to prevent, and limit the risk of, the outbreak or spread of COVID-19 and to otherwise support the purposes of the Act.

**4 Interpretation**

- (1) In this order, unless the context otherwise requires,—

**Act** means the COVID-19 Public Health Response Act 2020

**businesses and services** includes—

- (a) voluntary and not-for-profit services; and
- (b) both public sector and private sector businesses and services; and
- (c) businesses and services that provide space for other businesses and services to operate within (for example, shopping malls and marketplaces); and
- (d) businesses and services that provide facilities or venues for events or activities if people pay to attend an event or participate in an activity or pay to hire a facility or venue; and
- (e) the playing of sports professionally or semi-professionally

**category A social service** means a service provided under the Oranga Tamariki Act 1989, and other social services provided to support persons to maintain critical well-being and as crisis support for people who are unsafe or homeless

**defined space—**

- (a) means any single indoor space or outdoor space (*see* subclause (2)); and
- (b) if there is more than 1 space in any premises, means a space described in paragraph (a) for which there are systems and processes in operation that ensure, so far as is reasonably practicable, that persons using the space (other than workers) do not intermingle at a distance closer than 2 metres with other persons using, entering, or leaving the premises

**face covering** means a covering of any type that covers the nose and mouth of a person

**health service** has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003

**Isolation and Quarantine Order** means the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020

**managers of a private school** has the same meaning as in section 10(1) of the Education and Training Act 2020

**Maritime Border Order** means the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020

**person in control,—**

- (a) in relation to a defined space or premises (other than a vehicle in use as part of a public transport service),—
  - (i) means a person who manages or controls the defined space or premises; and
  - (ii) includes—
    - (A) any occupier of the defined space or premises; and
    - (B) if a facility or venue of a business or service is hired for an event or activity, that business or service; and
- (b) in relation to a public transport service,—
  - (i) means a person who carries on the business of operating the public transport service; but
  - (ii) excludes a person who drives or operates a vehicle in use as part of that service (unless the driver or operator is also a person described in subparagraph (i))

**premises** includes any commercial premises, private premises, or vehicle

**public transport service—**

- (a) means a service for the carriage of passengers for hire or reward that is available to the public generally; but
- (b) excludes a service for the carriage of passengers for hire or reward that is hired for the purposes of—

- (i) a business or service; or
- (ii) a social gathering; and
- (c) always includes a service of the kind described in paragraph (a) that is provided by means of a small passenger service vehicle

**QR code** means a unique identifying code issued by the New Zealand Government for the purpose of enabling contact tracing

**school board** has the same meaning as in section 7(1)(d) of the Crown Entities Act 2004

**school transport service** means the carriage of passengers for hire or reward that is contracted or funded by the Ministry of Education, local authorities, school boards, managers of a private school, or Auckland Transport for the sole or primary purpose of transporting children to and from school

**small passenger service vehicle** has the same meaning as in section 2(1) of the Land Transport Act 1998

**vehicle** includes a vessel, train, tram, ship, or aircraft

**worker** means, in relation to a business or service, any person who carries out work in any capacity for that business or service (whether paid or unpaid)

**workplace**—

- (a) means premises where work is being carried out, or is customarily carried out, for a business or service; and
  - (b) includes premises where a worker goes, or is likely to be, while at work.
- (2) For the purpose of the definition of defined space in subclause (1),—
- (a) an indoor space or outdoor space is a **single space** if there are walls (whether permanent or temporary) that substantially divide that space from other spaces:
  - (b) an outdoor space is also a **single space** if there is at least 2 metres that separates all people in that space from other people who are outside that space.

## 5 How requirements apply to businesses and services

- (1) A reference in this order to a requirement applying to a business or service applies that requirement to the person who carries on that business or service.
- (2) A requirement that applies in relation to a particular activity is a requirement that applies to a business or service to the extent that the activity is carried out by the business or service.
- (3) If more than 1 business or service operates in the same, or shared, premises (for example, a shopping mall, a marketplace, or a cafe that operates in an office building), each of those businesses and services must comply with all of the requirements in this order to the extent that they apply to that business or service or its activities.

**6 Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

**7 Application of order**

This order applies to the whole of New Zealand.

**Part 2****Alert level 1 requirements to prevent outbreak or spread of  
COVID-19***QR codes***8 Display of QR codes in workplaces**

- (1) A person in control of a workplace must ensure that a copy of a QR code for the workplace is displayed in a prominent place at or near the main entrance of the workplace.
- (2) However, subclause (1)—
  - (a) does not apply if the workplace is a vehicle; and
  - (b) applies to the workplace of a business or service that is in a dwelling house only if—
    - (i) customers or clients of the business or service customarily enter the dwelling house; or
    - (ii) workers of the business or service customarily enter the dwelling house (and those workers are not residents of the dwelling house or providing a category A social service).
- (3) A breach of subclause (1) is an infringement offence for the purposes of section 26(3) of the Act.

**9 Display of QR codes on public transport services**

- (1) A person in control of a public transport service must ensure that a copy of a QR code is displayed in a prominent place on or inside any vehicle that is in use as part of that service.
- (2) However, subclause (1) does not apply in relation to a public transport service if all persons using the service are required to supply their contact details in order to use the service.
- (3) In subclause (1), **public transport service** excludes a school transport service.
- (4) In subclause (2), **contact details** means—
  - (a) the name of the person; and
  - (b) a telephone number that may be used to easily contact the person.

- (5) A breach of subclause (1) is an infringement offence for the purposes of section 26(3) of the Act.

*Face covering requirements on public transport services*

**10 Face covering requirements on public transport services**

- (1) Every person must wear a face covering while on board a vehicle that is in use as part of a public transport service.
- (2) However, subclause (1) does not apply—
- (a) to a person who is a passenger on a small passenger service vehicle; or
  - (b) to a ferry service carrying passengers between the North Island and the South Island; or
  - (c) to air transport; or
  - (d) to a school transport service; or
  - (e) in the circumstances set out in clause 12.
- (3) A breach of subclause (1) is an infringement offence for the purposes of section 26(3) of the Act.

**11 Face covering requirements on domestic air transport services**

- (1) Every person must wear a face covering while on board a vehicle that is in use as part of a domestic air transport service.
- (2) However, subclause (1) does not apply in the circumstances set out in clause 12.
- (3) In this clause, **domestic air transport service** means a public transport service that is transporting persons by air transport between places that are both in New Zealand.
- (4) A breach of subclause (1) is an infringement offence for the purposes of section 26(3) of the Act.

**12 Exemptions from face covering requirements**

Clauses 10(1) and 11(1) do not apply if—

- (a) there is an emergency; or
- (b) wearing a face covering is not safe in all of the circumstances; or
- (c) the person is in a defined space or an enclosed space that is separate from the passenger area; or
- (d) the person is communicating with a person who is deaf or hard of hearing and visibility of the mouth is essential for communication; or
- (e) the person is asked to remove the face covering to ascertain identity; or
- (f) removal of, or not wearing, the face covering is otherwise required or authorised by law; or

- (g) the person is under the age of 12 years; or
- (h) the person has a physical or mental illness or condition or disability that makes wearing a face covering unsuitable; or
- (i) the person needs to remove the face covering to take medicine; or
- (j) the person needs to remove the face covering to eat or drink (if eating or drinking is permitted by the conditions of carriage on the relevant service).

### **Part 3**

#### **Miscellaneous**

##### *Exemptions*

#### **13 Exemption for emergencies**

Nothing in this order prevents any person from assisting in, or responding to, an emergency.

#### **14 Other exemptions from this order**

Nothing in this order applies—

- (a) to border services (including law enforcement activities related to border services) provided by Immigration New Zealand, the New Zealand Customs Service, Maritime New Zealand, or the Ministry for Primary Industries;
- (b) to the provision of health services;
- (c) to residential centres (including care and protection and youth justice residences), family homes, and group homes (including family group homes and community-based remand centres) that are approved or recognised for the time being by the chief executive of Oranga Tamariki as a place of care or treatment for the purposes of the Oranga Tamariki Act 1989;
- (d) within a corrections prison as defined in section 3(1) of the Corrections Act 2004 or any premises managed by or on behalf of the Department of Corrections;
- (e) to custodial or detention services managed by the New Zealand Police, the Department of Corrections, or the Ministry of Justice, or within a courthouse;
- (f) to the administration of sentences and orders by the Department of Corrections or on its behalf;
- (g) to people being transported for the purposes of the Department of Corrections and New Zealand Police fulfilling their purposes and performing their functions and duties;

- (h) to the New Zealand Parole Board:
- (i) to the New Zealand Security Intelligence Service:
- (j) to the Government Communications Security Bureau:
- (k) to the New Zealand Defence Force:
- (l) to the New Zealand Police:
- (m) to Fire and Emergency New Zealand:
- (n) to civil defence emergency management services provided by the National Emergency Management Agency and Civil Defence Emergency Management Groups:
- (o) to managed isolation or quarantine services for COVID-19 or to people while they are required to be in isolation or quarantine in accordance with either of the following:
  - (i) the Isolation and Quarantine Order:
  - (ii) the Maritime Border Order:
- (p) to workers carrying out any business or service referred to in any of paragraphs (a) to (o):
- (q) to people who are enforcement officers carrying out their functions and exercising their powers under the Act.

**15 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*.

*Revocation*

**16 Revocation of COVID-19 Public Health Response (Alert Level Requirements) Order (No 2) 2021**

The COVID-19 Public Health Response (Alert Level Requirements) Order (No 2) 2021 (LI 2021/7) is revoked.

**Schedule 1**  
**Transitional, savings, and related provisions**

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**Part 1**

**Provisions relating to this order as made**

**1 Interpretation**

In this Part, **commencement** means the date on and time at which this order commences.

**2 Existing exemptions made under COVID-19 Public Health Response (Alert Level Requirements) Order (No 2) 2021**

An exemption granted by the Director-General under clause 34 of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 2) 2021 that is in force immediately before commencement continues in force on and after commencement as if it had been granted under clause 15 of this order, and is subject to the same conditions (if any) as applied before commencement.

**3 Exemptions continued under COVID-19 Public Health Response (Alert Level Requirements) Order (No 2) 2021**

An exemption granted by the Director-General under clause 46 of the COVID-19 Public Health Response (Alert Level Requirements) Order 2021 that is continued under clause 3 of Schedule 1 of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 2) 2021 and is in force immediately before commencement continues in force on and after commencement as if it had been granted under clause 15 of this order, and is subject to the same conditions (if any) as applied before commencement.

Dated at Wellington this 22nd day of February 2021.

Hon Chris Hipkins,  
Minister for COVID-19 Response.

## Explanatory note

*This note is not part of the order, but is intended to indicate its general effect.*

This order replaces the COVID-19 Public Health Response (Alert Level Requirements) Order (No 2) 2021. It moves Auckland from alert level 2 to alert level 1, and keeps the rest of the country at alert level 1. The requirement to wear face coverings on public transport services and domestic air transport services continues to apply throughout the country.

This order comes into force at 11.59 pm on 22 February 2021.

### Detailed explanation

*Part 1* of this order sets out the purpose of this order (*see clause 3*) and definitions used in the order (*see clause 4*).

*Clause 5* provides for how the requirements in this order apply to businesses and services.

*Clause 6* refers to the transitional, savings, and related provisions set out in *Schedule 1*.

*Clause 7* states that the order applies to the whole of New Zealand.

#### *Alert level 1 requirements to prevent outbreak or spread of COVID-19*

*Clauses 8 and 9* set out requirements for unique identifying codes for the purpose of enabling contact tracing (QR codes).

*Clauses 10 to 12* set out face covering requirements on public transport services and domestic air transport services, and exemptions from those requirements.

#### *Exemptions*

*Clause 13* exempts people assisting in or responding to an emergency from the application of the order.

*Clause 14* sets out other exemptions for specified activities and services.

*Clause 15* empowers the Director-General of Health to grant exemptions from any provision of this order, subject to the Director-General being satisfied that certain criteria are met.

*Revocation*

*Clause 16* revokes the COVID-19 Public Health Response (Alert Level Requirements) Order (No 2) 2021.

*Schedule*

*Schedule 1* is for transitional, savings, and related provisions.

**Approval by resolution required**

This order must be approved by a resolution of the House of Representatives before the expiry of the period described in section 16(2) of the COVID-19 Public Health Response Act 2020. If this does not happen, the order is revoked on the expiry of that period.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 22 February 2021.  
This order is administered by the Ministry of Health.