Health New Zealand
Te Whatu Ora

# Border health protection controls in New Zealand legislation (DRAFT)

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## 1. Introduction

This paper summarises some of the key border health protection legislative controls that public health statutory officers may need to use to manage potential public health issues at points of entry (POE) to New Zealand – i.e., designated international airports or sea ports.

***Scope***

- The focus of this document is on controls in Parts 3, 3A, and 4 of the Health Act 1956. This information is intended as a summary for guidance purposes only. It should not be used as a substitute for applying legislation.
- This document does not include legislation (including Orders) made as part New Zealand's COVID-19 response. Such information is available at:
  - https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-response-planning/covid-19-legislation-and-orders
- Detailed guidance on the infectious disease management provisions in Part 3A of the Health Act (which can be applied throughout New Zealand and are not specific to the border) is provided in the Ministry's separate guidance:
  - www.health.govt.nz/publication/guidance-infectious-disease-management-under-health-act-1956
- Parts of this document have been adapted from material in the *New Zealand Influenza Pandemic Plan (NZIPAP): A Framework for Action:*
  - www.health.govt.nz/publication/new-zealand-influenza-pandemic-plan-framework-action

## 2. International context – the International Health Regulations (2005)

New Zealand has signed up to a global commitment under the IHR (2005) to plan for and respond to public health threats to the international community. The purpose of the IHR (2005) is to prevent, protect against, control and provide a public health response to the international spread of disease that is appropriate to the public health risk, and which avoids unnecessary interference with international traffic and trade.

The IHR (2005):

- Focuses on rapid response and containment at the source and controlling disease spread at borders.
- Covers existing and new diseases including emergencies caused by non-infectious disease agents (e.g. chemical spills).
- Takes a risk-based approach with the term "public health risk" implicit in many provisions.
- Includes requirements regarding countries' core capacity for *surveillance* and *response* and certain *border health control* core capacities at POE.

The main components of the IHR (2005) include:

- Provisions to set up a global system to manage information and provide a public health response for events which may constitute a public health emergency of international concern (PHEIC). This includes a

framework for countries to identify, assess, notify, verify and report events of potential concern to the WHO (e.g. Articles 5-18, Annex 2).

- Core capacity requirements for countries to "detect, assess, notify and report events" in accordance with the IHR and to "respond promptly and effectively to public health risks" (e.g. Articles 5, 13, and part A of Annex 1). That is, ensuring core *surveillance* and *response* capacities.

- Core capacity requirements at POE – international ports and airports etc (see Articles 19-22 and Part B of Annex 1). The IHR identifies two types of core capacities at POE:[1]

    - Core capacities needed at all times at POE; and
    - Core capacities to respond to events that may constitute a PHEIC.

- A range of public health actions/measures/documentation requirements for international travellers, goods, cargo and conveyances and the ports and airports that they use. This covers the provision of facilities, services, inspections, quarantine, treatment, and the range of control activities, etc (e.g. Articles 23-41).

- Administrative and co-ordination requirements such as countries nominating National IHR Focal Points and WHO nominating IHR Contact Points (e.g. Articles 4, 47-66).

## 3. New Zealand legislation

A suite of domestic legislation is relevant to successful implementation of the IHR. In the first instance, this includes the Health Act 1956 and regulations made under the Act (e.g. the Health (Quarantine) Regulations 1983.

Other relevant legislation includes the Hazardous Substances and New Organisms Act 1996, the Radiation Safety Act 2016, the Biosecurity Act 1993, the Food Act 2014, the Water Services Act 2021, Taumata Arowai–the Water Services Regulator Act 2020, the Customs and Excise Act 2018, civil aviation and maritime transport legislation, and other legislation.

This suite of legislation is supported by two other key statutes, to ensure the right response is made for severe emergencies:

- The Epidemic Preparedness Act 2006 which contains powers to facilitate the management of serious epidemics of specified diseases, and
- The Civil Defence Emergency Management Act 2002, which provides for other powers if a state of emergency is declared under that Act.

More guidance about such legislation is contained in the NZIPAPs (see Part C, pages 109-116). Information on COVID-19 legislation is available at the link provided above.

[1] More information about the required core capacities is provided at: www.health.govt.nz/our-work/border-health/meeting-core-capacity-requirements-international-points-entry

***Categories of diseases in the Health Act 1956***

The powers in the Health Act 1956 can be exercised only in relation to specific diseases or categories of diseases. When applying any of the provisions in the Health Act summarised in this document, you should check the definitions of the different 'categories of diseases' that the provisions actually apply to. These definitions then refer to the schedules at the back of the Act, where the diseases are listed. The table and diagram below help explain these categories.

| Term | Definition | Notes |
|---|---|---|
| **Communicable diseases** | • Includes any infectious disease or any other diseases declared by the Governor-General to be a communicable disease. | • The broadest category of disease under the Health Act, but very few provisions use this term and so it is of limited practical application. |
| **Infectious Diseases** | • Diseases listed in Parts 1 or 2 of Schedule 1 of the Health Act 1956.<br>• Part 1 lists the notifiable infectious diseases and Part 2 lists a set of 'other' infectious diseases. | • The second to broadest category in the Act. Many powers under the Act can be used for these diseases. |
| **Notifiable disease** | • Any notifiable infectious disease (see definition below), AND<br>• Any disease specified in Schedule 2 to the Health Act (includes some conditions that are not infectious such as blood lead absorption equal to or in excess of 0.24 µmol/ℓ). | • These diseases must be notified (i.e., reported) by health practitioners and medical laboratories to a medical officer of health (and in some cases also to the local council – see below). |
| **Notifiable infectious disease** | • Means any infectious disease listed in Part 1 of Schedule 1 to the Health Act. | • There are three Sections in Part 1 of Schedule 1:<br>o Section A – diseases that must be notified to a medical officer of health and the local authority, (e.g. cholera)<br>o Section B - diseases that must be notified to a medical officer of health (e.g. tetanus)<br>o Section C – some STIs that must be notified to a medical officer of health, but on an unidentified basis). |
| **Quarantinable infectious diseases** | • Diseases listed in Part 3 of Schedule 1 of the Health Act. | • Provisions applying to these diseases can generally can only be used at the border in certain circumstances. In general terms, these are more serious diseases and are relevant to the IHR. The quarantinable diseases include: COVID-19, novel coronavirus capable of causing severe respiratory illness, cholera, plague, yellow fever, MERS, avian influenza and non-seasonal influenza capable of being transmitted between humans, and viral haemorrhagic fevers capable of being transmitted between humans.<br>• Note, there is some overlap with notifiable infectious diseases – some diseases are classed as both quarantinable and notifiable (eg, cholera). |

## Legal definitions of disease categories under current Health Legislation


Common cold – infectious, but not legally an 'infectious disease' under the Health Act

**Quarantinable Diseases**
*eg Plague, cholera, MERs*

Applies to diseases listed in Schedule 1, Part 3 of the Health Act

**Notifiable Diseases (other than notifiable infectious diseases)**
*eg elevated blood lead, decompression sickness*

Applies to diseases listed in Schedule 2 of the Health Act

## 4. Border health/quarantine provisions in the Health Act 1956

The core provisions in the Health Act relating to border health are in Parts 3, 3A and 4 (plus some additional controls in regulations made under the Act).

Some key powers for public health statutory officers are summarised below. More detailed information about Health Act provisions that could be used in the border health context is provided in the table in **section 5**, below.

***Routine powers***

Routine powers are generally available to health officers and do not need prior approval to use as long as they follow the requirements of the Health Act. Some key routine powers in Parts 3 and 3A are noted below.

- **The power to enter premises (including boarding an aircraft or ship)** may be exercised at any reasonable time if a medical officer of health (or medical practitioner authorised by the medical officer of health or local authority) 'has reason to believe that there is or recently has been any person suffering from a notifiable infectious disease or recently exposed to the infection of any such disease' (section 77 of the Health Act).

- **The power to examine** allows a medical officer of health (or medical practitioner authorised by the medical officer of health or local authority) to medically examine any person in any premises, including on an aircraft or a ship, 'to ascertain whether a person believed to be suffering from a notifiable infectious disease or recently exposed is suffering or has recently suffered from the disease' (section 77 of the Health Act).

- **The power to detain for isolation purposes** allows a medical officer of health to issue a written direction to a person or contact whom the officer believes on reasonable grounds poses a public health risk arising from an infectious disease (section 92I to section 92L of the Health Act). Such a direction can have conditions such as the person staying at all or specified times at a specified place of residence, subject to specified conditions.

- **Direction to educational institutions** allows a medical officer of health to issue directions to the heads of educational institutions where staff or students pose a public health risk because of infectious disease (eg, a student or staff member could be directed to stay away from the institution for a specified period, until the infection risk has passed (section 92L of the of the Health Act)).

- **Contact tracing.** Health Act-empowered contact tracing is useful in the situation when voluntary contact tracing is not working, or the case is not cooperating. A medical officer of health, health protection officer, or other person authorised to contact trace can require the case to provide specified information about the contact. This includes each of the contacts' identifying and contact details, in order for the contact tracer to identify the disease's source, make contacts aware that they too may be infected and may require testing and treatment, and to limit the transmission of the disease (sections 92ZY – 92ZZH of the Health Act).

***Special powers***

Special powers (for a medical officer of health) generally need prior authorisation before they can be used. Such authorisation must come from either the Minister of Health; or via an epidemic notice having been issued by the Prime Minister under the Epidemic Preparedness Act 2006; or via a state of emergency having been declared under the Civil Defence Emergency Management Act 2002.

Some special Health Act powers include:

- **The power to examine**, for the purpose of controlling infectious disease, gives a medical officer of health the authority to 'require persons to report themselves or submit to medical testing at specified times and places' (sections 70(1)(e) and (ea)).

- **The power to detain, isolate or quarantine** allows a medical officer of health to 'require persons, places, buildings, ships, vehicles, aircraft, animals, or things to be isolated, quarantined, or disinfected' (section 70(1)(f)). The power to prescribe preventive treatment allows a medical officer of health, in respect of any person who has been isolated or quarantined, to require people to remain where they are isolated or quarantined until they have been medically examined and found to be free from infectious disease, and until they have undergone such preventive treatment as the medical officer of health prescribes (section 70(1)(h)).

- **The power to requisition premises** allows a medical officer of health to requisition premises and vehicles for the accommodation, treatment, and transport of patients (section 71(1)).

- **The power to close premises** such as schools under sections 70(1)(1a) and 70(1)(m).

***Part 4 (Quarantine) of the Health Act 1956***

Some border health measures summarised in this document may involve an element of compulsion (i.e., an action being undertaken even if against a person's will). Such measures need to be authorised by statute or else they are likely to be unlawful and contrary to the New Zealand Bill of Rights Act 1990. Compulsory measures could include:

- Requirements for people to be tested and screened
- Quarantining or isolating people (that is, removing symptomatic or non-symptomatic people to a quarantine or treatment facility or prohibiting them from leaving a particular facility)
- Restricting the movement of people into or out of an area
- Restricting travel of people (within or out of New Zealand)
- Imposing a duty to supply information (e.g. future travel plans or past travel history)
- Placing requirements on people to undergo preventive treatment
- Requirements on people not to go to work or other public places or to do so only under certain conditions
- Commandeering of resources (e.g. land, buildings or vehicles).

There is also a range of powers under the Act regarding **quarantine** (see Part 4, **ss 94-112AA**). These are summarised in the table in **section 6** below, but broadly cover:

- The craft and people liable to quarantine

- Powers to require information or give directions
- Powers around boarding or detaining ships/aircraft or taking things from such craft
- Powers covering inspection of craft
- Power around examining people or requiring bodily samples
- Powers around placing people under observation and or surveillance of those liable to quarantine
- Contact tracing
- Detention, isolation or quarantine
- Measures to cleanse, fumigate, disinfect craft
- Infected baggage, cargo, etc.

Further information about potential border management actions is contained in Part C of NZIPAP (see pgs 118-122)

***Controls in Part 3A of the Health Act 1956***

Part 3A contains a number of controls that can be used to help manage infectious diseases anywhere in New Zealand – which could include at the border. These measures include:

- Contact tracing provisions
- The ability for medical officers of health to issue written *directions*
- The ability for medical officers of health to apply to the District Court for three kinds of *orders* (public health orders, orders for contacts of cases, and medical examination orders)
- The ability for medical officers of health to issue *urgent public health orders* in limited circumstances.

A summary of these measures is provided below. However, public health statutory officers should refer to the Ministry of Health's *Guidance on Infectious Disease Management under the Health Act 1956* for comprehensive guidance on these measures (www.health.govt.nz/publication/guidance-infectious-disease-management-under-health-act-1956).

Contact tracing (sections 92ZY-92ZZH)

Contact tracing is an internationally recognised public health strategy to help reduce the spread of infectious disease in the community. It is the process of identifying the contacts of an individual who has, or may have, an infectious disease and ensuring that those contacts are aware of their risk of exposure and encouraging them to seek testing and treatment if necessary. It is also used to help identify the source, and limit the transmission of, an infectious disease or suspected infectious disease.

Part 3A provides the legislative framework to support formal contact tracing to be undertaken by a medical officer of health, health protection officer, or nominee. It involves specific process steps, preconditions and requirements and can only be done by specific, authorised people or office holders. It also involves a mandatory requirement that the case answer questions/provide particular information about their contacts, and failure to do so comprises an offence.

The guidance referred to above describes when formal contact tracing is appropriate and explains the mandatory process steps and statutory powers to require specific information from the case about their contacts. Formal contact tracing may be considered necessary when voluntary inquiries are unlikely to work or are inappropriate, or in situations of urgency, taking account of the presenting public health risk.

Directions (sections 92I-92U)

Medical officers of health can issue directions when an individual poses a public health risk, provided the statutory preconditions for each are met. These include the following categories:

- Public health directions to individuals, such as to refrain from work, attend counselling, restricting travel or activities, or to take preventive steps against disease transmission
- Directions to contacts – these include conditions similar to public health directions to individuals
- Medical examination directions – to undertake a medical examination/s with a specified health provider/s within a specified time/s
- Educational institution directions to the person in charge to close all or part of the institution, or to direct a person to remain at home.

Medical officers of health must give directions in writing. The directions are time limited, with the duration specified being within a maximum timeframe of not more than six months (most will not meet that duration). Model templates to support medical officers of health in making directions are provided in the Ministry's guidance referred to above.

Court orders (sections 92Z-92ZE)

Medical officers of health can apply to the District Court for three kinds of court orders:

- Public health orders imposed on cases, such as requiring treatment, detention in a hospital, to stay at a specified residence, supervision, or to take specified actions addressing the public health risk
- Orders for contacts of cases – these include conditions similar to public health orders for cases
- Medical examination orders – for use when a medical officer of health or medical practitioner has asked the case to undergo an examination and the case has not complied.

Court orders, like directions, are time limited – they are not more than six months in duration.

Model templates to support medical officers of health in applying to the District Court for such are provided in the Ministry's guidance.

Urgent public health orders (sections 92ZF-92ZG)

Medical officers of health can also impose urgent public health orders, which are administrative orders. The effect of an urgent public health orders is to detain a case for 72 hours at a specified premise, or parts of a premise, subject to any stated conditions.

Medical officers of health can only impose urgent public health orders if the case poses a public health risk and the medical officer of health cannot adequately manage it by imposing a direction, urgent action is necessary to address the risk, and it would not be practicable to wait for the District Court's decision on whether to impose a court order.

The medical officer of health can apply to the District Court before the 72-hour period expires when the public health risk posed is likely to continue for more than 72 hours.

## 5. Summary of key Health Act provisions relevant to border health

***Note: the table below focuses on some of the key provisions in Parts 3 (Infectious and notifiable diseases), 3A (Management of infectious diseases), and 4 (Quarantine) of the Health Act 1956 that could be relevant is managing border health risks.***

***It DOES NOT include legislation (including Orders) made as part New Zealand's COVID-19 response. Such information is available at:***

- https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-response-planning/covid-19-legislation-and-orders

***Travellers and others at the border***

| Possible controls or measures | Part of HA | Summary of NZ legislation that may be relevant to the control or measure. (NB: This is a high-level summary only. Please refer to the legislation for full details.) |
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| Persons liable to quarantine | Part 4 | • A person is "liable to quarantine" if they are on board or have disembarked from a ship or aircraft that is liable to quarantine **(s. 97(1) HA)**.<br>• The liability of the aircraft or ship itself to quarantine is defined very broadly in **s. 96** and includes a ship or aircraft arriving into New Zealand from any place beyond New Zealand, or every ship or aircraft arriving at any port or aerodrome in New Zealand from any infected place in New Zealand, or every ship on board which any quarantinable disease or any disease reasonably expected to be a quarantinable disease has broken out or been discovered.<br>• The combined effect of **ss. 96 and 97(1)** essentially make all people arriving in the country (or from an infected place within New Zealand) liable to quarantine. |
| Require information from people<br><br>(e.g. their destination, where they have been, contact details, health docs, etc) | Part 4 & HQR | • People "liable to quarantine" must give information requested by a Medical Officer of Health (MOH) or authorised person if they reasonably believe such information is needed to manage risks to public health **(s. 97A(1)(b) HA).**<br>• MOH or authorised person can require persons in charge of aircraft/ships to collect and supply information from PAX etc (e.g. use PAX declaration cards, or other reasonable means). This can include information about peoples travel details, recent activities, movements in last 14 days, symptoms, etc **(s. 97A(2)-(4)) HA).**<br>• Captains of arriving aircraft must determine, as far as practicable, if a person on board is ill (e.g. has diarrhoea, vomiting, abnormal temperature, skin rash) or any condition on board that may lead to the spread of disease. Captain to notify airline agent prior to arrival. Agent to immediately notify MOH/HPO. **(Reg 3 HQR)**. (NB: this is a precursor step to pratique, covered below). |
| Require person to comply with directions | Part 4 | • People "liable to quarantine" must comply with directions, requirements, instructions etc of MOH or authorised person. **(s. 97A(1)(a) HA).** |
| | Part 3A | • MOH can issue *directions* when a person poses a public health risk, provided the statutory preconditions for each are met. Such directions could include the person refraining from work, participating in counselling or education from a health provider, restricting their travel or activities, staying at a specified place of residence, refraining from going to certain places or associating with certain persons (or class of persons), and taking preventive steps against disease transmission, etc **(s. 92I HA)**.<br>• MOH may also give similar types directions to *contacts* of individuals posing public health risk **(s. 92J HA)** if he/she believes on reasonable grounds that:<br>○ The person has been in contact with a person who has, or may have, an infectious disease; and |

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| | | ○ The disease has been transmitted to the individual, the individual poses, or is likely to pose, a public health risk.<br>• MOH can give *directions* to undergo specified medical examinations **(s. 92K HA)** – see the 'medical examination' row below.<br>• When a person does not comply with a direction given under sections, or their compliance seems unlikely, a MOH should consider applying to the District Court for an order if this is likely to be the least restrictive and proportionate alternative to address the 'public health risk' the person pose **(ss. 92Z-92Zs HA – various orders are summarised in the rows below)**. |
| Entry powers | Part 3 | • MOH (or other authorised medical practitioner) may at all reasonable times enter premises (including aircraft/ships) if they have reason to believe a person has or has recently been exposed to a **NOTIFIABLE INFECTIOUS** disease **(s. 77 HA).** This power of entry does not extend to HPOs. |
| Detention of craft and people for inspection of people | Part 4 & HQR | • MOH, HPO, or authorised person can require PAX and crew on ships or aircraft arriving in NZ to be detained for inspection if a person has died or become ill from a **QUARANTINABLE** disease, or death occurred amongst birds, insects, rodents on the craft (not from usual poisoning) **(s. 97B HA).**<br>• While the craft and persons on board are under detention an inspection can be undertaken to identify any further controls required e.g. quarantine or isolation of other persons on board **(s. 97B HA).** This power can be used to detain the craft once pratique has been issued (i.e., passengers had disembarked), however it would not allow for the recall of people to the craft.<br>• Health (Quarantine) Regulations 1983 set out a schedule of measures that can be applied. However, the schedule is outdated and only refers to plague and cholera – rather than taking an all public health risks approach **(see r. 22 and Schedule 3 of HQ Regs 1983)** |
| Medical examination and providing bodily samples | Parts 3 & 4 | • If MOH/HPO reasonably believes a person on an arriving aircraft or ship has a **QUARANTINABLE** disease or was exposed to such in last 14 days, they can require the person to be examined and to provide a bodily sample that is reasonable to require **(see ss. 97(2) & 97D(1)(a)-(b) & (2) HA).** Without such a reasonable belief or suspicion, these powers cannot be used.<br>• MOH (or other authorised medical practitioner) who has entered premises under s. 77 HA (incl. boarding a ship/aircraft) can medically examine person **(s. 77 HA).** This power of examination does not extend to HPOs.<br>• MOH can examine persons on arriving aircraft (that is still liable to quarantine) suffering from an **INFECTIOUS** disease, or who are reasonably suspected of suffering from a **QUARANTINABLE** disease, or exposed to infection from a **QUARANTINABLE** disease **(ss. 101(3) & (5) HA).** |
| | Part 3A | • MOH may give a public health *direction* to a case to undergo specified medical examinations with specified health providers within a particular time or frequency, at specified places **(s. 92K HA)**. Such a direction cannot be used to compel a person to submit to treatment. To give such a direction the MOH must believe on reasonable grounds that the person:<br>○ May have an infectious disease (eg, because he or she has been in contact with a person who has an infectious disease)<br>○ Has received a request from their medical practitioner or a MOH to undergo a medical examination within a specified period, to confirm whether or not he or she has an infectious disease<br>○ Has not complied with the request for a medical examination within the period specified<br>○ If he or she has the infectious disease, poses a public health risk.<br>• MOH can apply to the District Court for a *medical examination order* **(s.92ZH HA)**. Before imposing such as order the court must be satisfied that: (a) the person concerned may have an infectious disease, (b) a medical practitioner or a MOH has asked him or her to undergo a medical examination or examination to establish whether the disease is present within a specified period, and (c) the person has not complied, and (d) the person poses a public health risk. |
| Detention / Isolation / quarantine of a person likely to | Part 3A | • MOH can issue *directions* when a person poses a public health risk from an infectious disease, provided the statutory preconditions for each are met. One such direction could be to require a person to stay, at all times or at specified times, at a specified *place of residence*, subject to specified conditions **(s. 92I (4)(f) HA)**. The direction must specify its duration. Other related directions can be made such as the person having to refrain from |

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| spread any infectious disease | | going to certain places or associating with certain persons (or class of persons) or taking preventive steps against disease transmission. Note: the wording of this provision refers to a "place of residence", so this provision would not cover, for example, seeking to require a person to stay at a place such as a hospital. Other provisions would likely need to be used to do this. For example, seeking to use some of the Part 4 (Quarantine) provisions noted below, or the provisions in Part 3A about a MOH seeking a public health order from a court **(ss. 92Z-92ZE HA)**, or a MOH making using an urgent public health order (ss. **(ss. 92ZF-ZG)** – both are summarised below).<br>• MOH may also give similar types directions to *contacts* of individuals posing public health risk **(s. 92J HA)** if he/she believes on reasonable grounds that:<br>o The person has been in contact with a person who has, or may have, an infectious disease; and<br>o The disease has been transmitted to the individual, the individual poses, or is likely to pose, a public health risk.<br><br>• MOH can apply to the District Court for a *public health order* **(ss. 92Z-92ZE HA)**. Such orders could include the person: being detained in a hospital or other specified place; staying at a specified residence; being supervised by a named person; being subject to public health surveillance (with or without using electronic communication devices), etc Before imposing such as order the court must be satisfied that the requirements of the order are necessary to prevent or minimise the public health risk posed by the individual.<br><br>• MOH can apply to the District Court for orders for *contacts* of cases **(s92ZJ)**. Requirements in such orders could include the person: staying at a specified place of residence; refraining from carrying out specified activities; being supervised by a named person; refraining from going to specified places; refraining from associating with specified persons (or classes of persons); and taking specified actions to prevent or minimise the public health risk posed by the individual.<br><br>• MOH can give an *urgent public health order* to detain a person at a specified premises (or part of a premises) for 72 hours, subject to any stated conditions **(ss. 92ZF-ZG)**. If the public health risk is not likely to cease within the 72-hour period, the MOH should use that time to prepare and submit an application to the District Court for a public health order of longer duration. The following precondition must be met for the MOH to give an urgent public health order:<br>(a) an individual poses a public health risk<br>(b) the MOH cannot adequately manage that risk by giving a direction<br>(c) the MOH needs to take urgent action to address the risk<br>(d) it is not practicable for the District Court to decide an application for a public health order. |
| Detain under surveillance - at a hospital or other suitable place | Part 4 | • MOH or HPO can require a person liable to quarantine to be detained under surveillance at a hospital or suitable place until they are satisfied that person is not infected with the disease concerned or is not able to pass that disease on.**(s. 97E(3)(a) combined with s. 97(2) HA refer)**.<br>• However, for these powers in **s. 97E** regarding surveillance to be available **s. 97(2)** requires that a person on an incoming craft must be liable to quarantine and the MOH has to believe or suspect on reasonable ground that:<br>o She/he is infected with a **QUARANTINABLE** disease; or<br>o She/he has been exposed to a **QUARANTINABLE** disease within 14 days BEFORE arrival in New Zealand (regardless of whether the disease itself was actually classified a **QUARANTINABLE** disease at the time of exposure).<br>• Without such a reasonable belief or suspicion, these surveillance powers in **S97E** cannot be used (unless the person has been quarantined under a MOH special power in s. **70(1)(f)** – which itself has to be specifically invoked under the HA).<br>• The period of detention (at a hospital or suitable place) must not continue for more than 28 days, and also not continue for longer than 14 days unless the MOH or HPO is satisfied that the person is still infected with the disease and likely to be able to pass it on **(s. 97E(4)(a) & (b)).** |
| | Part 3A | • Some of the Part 3A provisions noted above about MOHs giving *directions* or seeking Court *orders* could potentially also be relevant in the border |

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| | | health context.<br>○ MOH can issue *directions* when a person poses a public health risk from an infectious disease, provided the statutory preconditions for each are met. One such direction could be to require a person to stay, at all times or at specified times, at a specified place of residence, subject to specified conditions **(s. 92I (4)(f) HA)**. The provision does not include a direction to stay at a "hospital", however.<br>○ MOH could apply to the District Court for a *public health order* **(ss. 92Z-92ZE HA)**. Such orders could include the person: being detained in a hospital or other specified place; staying at a specified residence; being supervised by a named person; being subject to public health surveillance (with or without using electronic communication devices), etc Before imposing such as order the court must be satisfied that the requirements of the order are necessary to prevent or minimise the public health risk posed by the individual.<br>○ MOH can apply to the District Court for orders for *contacts* of cases **(s92ZJ)**. Requirements in such orders could include the person: staying at a specified place of residence; refraining from carrying out specified activities; being supervised by a named person; refraining from going to specified places; refraining from associating with specified persons (or classes of persons); and taking specified actions to prevent or minimise the public health risk posed by the individual.<br>○ MOH can give an *urgent public health order* to detain a person at a specified premises (or part of a premises) for 72 hours, subject to any stated conditions **(ss. 92ZF-ZG)**. If the public health risk is not likely to cease within the 72-hour period, the MOH should use that time to prepare and submit an application to the District Court for a public health order of longer duration. The following precondition must be met for the MOH to give an urgent public health order:<br>(a) an individual poses a public health risk<br>(b) the MOH cannot adequately manage that risk by giving a direction<br>(c) the MOH needs to take urgent action to address the risk<br>(d) it is not practicable for the District Court to decide an application for a public health order. |
| Kept under surveillance at large | Part 4 | • MOH or HPO can require a person liable to quarantine to be placed under surveillance at large **(s. 97E(3)(b) combined with s. 97(2) HA).**<br>• For these powers in s **97E** regarding surveillance to be available **s. 97(2)** requires that a person on an incoming craft must be liable to quarantine and the MOH has to believe or suspect on reasonable ground that:<br>○ She/he is infected with a **QUARANTINABLE** disease; or<br>○ She/he has been exposed to a **QUARANTINABLE** disease within 14 days BEFORE arrival in New Zealand (regardless of whether the disease itself was actually classified a **QUARANTINABLE** disease at the time of exposure).<br>• Without such a reasonable belief or suspicion, these surveillance powers in **S97E** cannot be used (unless the person has been quarantined under a MOH special power in **s. 70(1)(f**) – which itself has to be specifically invoked under the HA).<br>• Before being placed under surveillance at large the person must give an undertaking that he/she will report to the MOH or HPO or a medical practitioner at the times and places required **(s. 97E(5)**.<br>• When a person is being kept under surveillance at large they must (**s. 97E(6):**<br>○ present for and submit to any medical exam or test required by the MOH<br>○ give the MOH or HPO all information he/she reasonably requires to enable the management of risks to public health<br>○ report to a MOH or medical practitioner, if instructed to do so by the MOH<br>○ report daily or at stated intervals in person to the MOH or medical practitioner<br>○ tell the MOH or medical practitioner if they leave for another place, and give details of the address to which he or she is going. |
| | Part 3A | • MOH can apply to the District Court for a *public health order* **(ss. 92Z-92ZE HA)**. Such orders could include the person being supervised by a named person and being subject to public health surveillance (with or without using electronic communication devices). Before imposing such as order the court must be satisfied that the requirements of the order are necessary to prevent or minimise the public health risk posed by the individual.<br>• MOH can apply to the District Court for orders for *contacts* of cases **(s92ZJ)**. Requirements in such orders could include the person: staying at a |

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| | | specified place of residence; refraining from carrying out specified activities; being supervised by a named person; refraining from going to specified places; refraining from associating with specified persons (or classes of persons); and taking specified actions to prevent or minimise the public health risk posed by the individual. |
| Prescribing medical treatment | Part 4 | • A MOH special (emergency) powers under **s. 70 HA** might be able to be used in very rare cases to detain a person until they have undergone "preventative treatment" as prescribed **(see 70(1)(h)).** However, people have a fundamental human right to refuse medical treatment.<br>• If such an occasion occurs, the isolation and detention provisions should allow time for further guidance to be sought from the Ministry about an appropriate course of action. |
| | Part 3A | • MOH can apply to the District Court for a *public health order* **(ss. 92Z-92ZE HA)**. Before imposing such an order the court must be satisfied that the requirements of the order are necessary to prevent or minimise the public health risk posed by the individual. Requirements in such orders could include the person being treated for the infectious disease by a certain health provider. |
| Contact tracing | Part 3A | • Voluntary/informal contact tracing is often used to help manage infectious disease risks. It involves a process of identifying relevant contacts of an individual who has or may have an infectious disease and ensuring that those contacts are aware of their risk of exposure, can be offered medical treatment and support if needed, and who may need to undergo isolation or quarantine or take other steps to prevent further transmission.<br>• Formal contract tracing can be used when voluntary contact tracing is not working, or if the case is not cooperating. A MOH, HPO, or other authorised can require the case to provide specified information about the contact. This includes each of the contacts' identifying and contact details, in order for the contact tracer to identify the disease's source, make contacts aware that they too may be infected and may require testing and treatment, and to limit the transmission of the disease (**ss. 92ZY – 92ZZH HA).** |
| | Part 4 | • MOH or authorised person can obtain from departments of state information about people "liable to quarantine" that is necessary to trace the person's movements or contacts they have had with other people **(s. 97A(6) HA).** |
| | Other | • Customs also has the ability to access information for public health and safety reasons – e.g. enable contact tracing from PAX arriving from areas of concern – via the NZ mandatory form PAX fill out **(ss. 47, 301, 357 Customs and Excise Act 2018)**. |
| Refuse entry at border | | • The Health Act does not have an explicit power to refuse entry into NZ. Use could be made of the quarantine and isolation provisions in the Act, etc.<br>• Restrictions on who can travel to New Zealand were implemented as part of the COVID-19 response under separate legislation. |
| Exit screening | | • Although no legislative provisions specifically cover exit screening, such measures may be complemented but require at least tacit agreement (e.g. by way of signage informing departing travellers). NB: airlines should generally not allow obviously unwell PAX to board. |
| Customs powers to direct and detain | | • Customs and Excise Act 2018 provides Customs officers with powers to direct and detain persons if they have reasonable cause to suspect that person is liable to be detained under any enactment because of an infectious disease (**sections 208 and 221**). Customs officers would be exercising these powers on advice/request of medical officers of health or health protection officers. |
| Other provisions covering people (not restricted to travellers) | Part 3 | • Duty on occupiers of premises to consult a doctor or notify authorities if they have a reasonable suspicion that a person on the premises (includes aircraft/ships) has a **NOTIFIABLE** disease (**s. 75 HA**). |
| Powers prescribed by regulations | Part 3 | • If any person on board an arriving ship or vessel has, or MOH/HPO suspects them to have, or been recently exposed to, a **QUARANTINABLE** disease the MOH/HPO can do all such things and give directions as prescribed by regulations (**s. 108 HA**). |

***Aircraft***

| Possible controls or measures | Part of HA | Summary of NZ legislation that may be relevant to the control or measure. (NB: This is a high-level summary only. Please refer to the legislation for full details.) |
|---|---|---|
| Quarantine | Part 3 | • Aircraft "liable to quarantine" is defined broadly to include aircraft from overseas, or from an infected place (in NZ) **(s. 96(2) HA).**<br>• Aircraft remain "liable to quarantine" until pratique granted **(s. 98(1) HA).** |
| Board aircraft (entry powers) | Part 3 | • MOH (or other authorised medical practitioner) can enter premises (including aircraft/ships) if they have reason to believe a person has or has recently been exposed to a **NOTIFIABLE INFECTIOUS** disease **(s. 77 HA).** |
| Detention & inspection of aircraft | Part 4 | • MOHs, HPO or authorised persons can require aircraft (and passengers/crew) to be detained for inspection if the aircraft has arrived in NZ and a person has died or become ill from a **QUARANTINABLE** disease, or death has occurred amongst birds, insects, rodents on the craft (not from usual poisoning) **(s.97B HA.).**<br>• MOHs/HPOs can board an aircraft "liable to quarantine" and inspect it **(s. 101(2) HA).** |
| | Part 7 | • Generic power of entry and inspection for MOHs, HPOs, authorised persons to enter (at reasonable times) any ship, premise (definition includes aircraft), dwelling house, land, building to inspect and execute thereon any works authorised under the HA (**s. 128 HA).** |
| Require steps to be taken | Part 4 | • If MOHs/HPOs reasonably believe an arriving aircraft has a person on board with a **QUARANTINABLE** disease or exposed to such in the last 14 days, they can require the captain to take reasonable steps to prevent the spread of infection, destroy birds, rodents, insects, remove or abate conditions on the craft likely to convey infection **(ss. 97(2) & 97D(1)(d) HA).** |
| Granting of pratique | Part 4 | • MOH must grant pratique to aircraft when satisfied no **QUARANTINABLE** disease on board **(s. 107(1) HA).**<br>• In practice, pratique for aircraft generally withheld only by exception (ie, pratique deemed to be granted in the absence of reports of illness). (The situation is different for ships). |
| Redirection of aircraft | Part 4 & HQR | • Internationally arriving aircraft that arrive at non-Customs airports can be redirected to Customs airports if a MOH or Inspector of Health consider that certain sanitary measures are needed for the aircraft or persons on board, which can only be carried out at a Customs airport. **(Reg 4 HQ Regs 1983).** |
| | Part 3 | • If an Epidemic Management notice applies, a MOH can require landed aircraft to travel to another place **(s.74D HA).** |
| Disinfection / fumigation of craft | Part 4 | • MOH/HPO can require cleansing, fumigation, disinfection etc of craft if in an insanitary condition or conditions favourable to breakout of disease exist **(s. 110 HA).**<br>• **Regs 6-7 HQR** cover spraying of aircraft to destroy mosquitoes in more detail. |

***Ships***

| Possible controls or measures | Part of HA | Summary of NZ legislation that may be relevant to the control or measure. (NB: This is a high-level summary only. Please refer to the legislation for full details.) |
|---|---|---|
| Quarantine and measures | Part 4 | • The definition of ships that are "liable to quarantine" is defined broadly to include ships arriving from overseas ports or from an infected place (in NZ), or every ship suspected of having a **QUARANTINABLE** disease **(s. 96(1) HA).**<br>• Controls on ships "liable to quarantine" include:<br>  ○ Not being allowed to bring the ship to a wharf or landing place unless permitted **(s. 99(1) (a) HA)**<br>  ○ Prohibiting people from going on board, or leaving, unless authorised **(s. 99(1)(b) & (c))**<br>  ○ Prohibiting goods, mail, or articles to be landed etc **(s. 99(1)(d) HA)**<br>  ○ Prohibiting other vessels from drawing within 50m **(s. 99(1)(e) HA)**<br>  ○ Quarantine signal to be displayed until pratique granted **(s. 100 HA)**<br>• Ships remain "liable to quarantine" until pratique granted **(s. 98(1) HA).** |
| Board ship (entry powers) | Part 3 | • MOH (or other authorised medical practitioner) can enter premises (including aircraft/ships) if they have reason to believe a person has or has recently been exposed to a **NOTIFIABLE INFECTIOUS** disease **(s. 77 HA).** |
| | Part 4 | • NB. Some other provisions have powers of entry built into them. For example, under **s. 111 HA** a MOH, which is discussed in relation to inspections in the row below). |
| Detention & inspection of ships | Part 4 | • MOH, HPO, or authorised persons can require ships to be detained for inspection if arrived in NZ and appears a person has died or become ill from a **QUARANTINABLE** disease, or death has occurred amongst birds, insects, rodents on the craft (not from usual poisoning) **(s. 97B HA).**<br>• MOHs/HPO can board, before granting pratique to a ship "liable to quarantine", and inspect it for **INFECTIOUS** diseases **(s. 101(1) HA).**<br>• MOH, HPO, officers of the Ministry of Health, or those acting under the authority of a MOH/HPIO have the power to board ships in port and inspect it and any goods, animals, PAX list, log book and papers etc **(s. 111(1) HA).** |
| | Part 7 | • Generic power of entry and inspection for MOH, HPOs authorised persons to enter (at reasonable times) any ship, premise (definition includes aircraft), dwelling house, land, building to inspect and execute thereon any works authorised under the HA (**s. 128 HA).** |
| Require steps to be taken to prevent spread of infection | Part 4 & HQR | • If MOH/HPO reasonably believe arriving ships have people on board with **QUARANTINABLE** diseases, or a person was exposed to such in last 14 days, they can require the captain to take reasonable steps to prevent the spread of infection, destroy birds, rodents, insects, remove or abate conditions on the craft likely to convey infection **(ss. 97(2) & 97D(1)(d) HA).**<br>• Ship masters arriving from an infected place within NZ are not to moor or berth unless with MOH permission. Also, ships arriving from another NZ port (that is not an infected place) with a person with, or suspected to have, a **QUARANTINABLE** disease are not to be berthed unless instructed to by an MOH/HPO **(ss.105 & 106 HA).**<br>• Health inspectors can require ship captains to carry out all practical measures to prevent migration of rodents from ships. **(Reg 20 HQR).** |
| Granting of pratique | Part 4 & HQR | • MOH must grant pratique to ships "liable to quarantine" if satisfied there is no **QUARANTINABLE** disease on board. **(s. 107(1) HA).**<br>• In practice, a process of actively seeking and receiving pratique is employed in NZ for ships (the situation is different for aircraft)<br>• HQR set out a process for granting pratique by radio **(reg 13).** |

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| Notify sick person to authorities | Part 3 | • Ship masters are required to notify to a MOH of any sick person on a ship in harbour who is reasonably expected to have a **NOTIFIABLE INFECTIOUS** disease **(s. 76 HA).** NB: this applies to all ships in NZ waters and not just to those arriving for the first time (e.g. cruise ships). |
| Inspection, disinfection, fumigation, etc of ships | Parts 3, 4 & HQR | • Parts of harbours can be designated as places of inspection for ships "liable to quarantine" **(s. 94 HA).**<br>• MOH/HPO can require crafts in an insanitary condition, or condition favourable to breakout of disease, to be cleansed, fumigated, disinfected, or treated **(s. 110 HA).**<br>• HQR set out more detail around fumigation **(see regs 18, 19, 22 and schedule 3)**.<br>• See also the 'Detention and inspection' row above for other provisions **(e.g. s. 111(1) HA).** |
| Medical examination | Part 4 | • If MOH boards a ship he/she can any person suspected of having an **INFECTIOUS** disease to have any prescribed examination **(s. 111(2) HA).** |
| Advance Notice of Arrival | | • Specific information is to be provided at least 48 hours prior to a vessel's arrival into New Zealand using the New Zealand Advance Notice of Arrival form. |
| Maritime Declaration of Health | Part 4 | • Master of ship from overseas port is required to ascertain health of persons on board. Maritime Declaration of Health Form to be provided to authorities on arrival. A MOH/HPO or authorised person can also require further information about the state of health of a person on board. Offences are provided to help enforce this section **(s 102 HA).**<br>• |
| Ship Sanitation Certification | HQR | • HQR still refer to the now superseded deratting certification regime **(regs 15, 17, 18).** To comply with the IHR the Ministry now requires use of ship sanitation certificates. (The Ministry is progressing an amendment to the HQR to refer to the new SSC regime). |

***Cargo, containers, baggage, goods, postal items, human remains, etc***

| Possible controls or measures | Part of HA | Summary of NZ legislation that may be relevant to the control or measure. (NB: This is a high-level summary only. Please refer to the legislation for full details.) |
|---|---|---|
| A range of controls are included over and above those discussed under aircraft/ships above. | Part 3 &4 & HQR | • If MOH/HPO suspects that a **QUARANTINABLE** disease is likely to be spread by any baggage, cargo, clothing, food/drink, linen, luggage, stores, water or other substance or thing that is on or has been removed from a ship or aircraft, they can do such things and give directions as prescribed by regulations **(s. 109 HA).**<br>• Number of provisions in HA around transportation, storage, and disposal of human remains, establishing mortuaries and facilities to handle bodies etc **(e.g. see ss 84, 86).**<br>• Controls on ships "liable to quarantine" include prohibiting goods, mail, or articles to be landed, etc **(s. 99(1)-(2) HA).**<br>• If MOH/HPO reasonably believes arriving aircraft or ship has person on board with a **QUARANTINABLE** disease or was exposed to such in last 14 days, they can require any thing in or on craft to be taken and any reasonable sample required **(ss 97(2) & 97D(1)(c) HA).**<br>• Health (Quarantine) Regulations 1983 set measures in a schedule that can be applied when detaining craft and people. However, the schedule is outdated an only refers to plague and cholera – it covers measures such as baggage and linen being disinfected etc **(see reg 22 and Schedule 3 of HQ Regs).** |

***Special emergency powers in the Health Act (ss. 70-71).***

Such powers can only be activated if: the Minister authorises it; or a state of emergency under CDEM Act is declared; or an Epidemic Notice in force (issued under the Epidemic Preparedness Act 2006)

| Possible controls or measures | Part of HA | Summary of NZ legislation that may be relevant to the control or measure. (NB: This is a high-level summary only. Please refer to the legislation for full details.) |
|---|---|---|
| Insanitary things | Part 4 | • If MOH special (emergency) powers to prevent outbreak or spread of **INFECTIOUS** disease are ever invoked, this includes the ability to:<br>o Declare land, buildings, things to be insanitary and prohibit their use for specific purposes **(s. 70(1)(a) HA)**<br>o Cause insanitary buildings to be pulled down and destroyed, disposed of **(s. 70(1)(b) HA)**<br>o Destroy and dispose of any insanitary thing **(s. 70(1)(c) HA)**<br>o Destroy infected animals **(s. 70(1)(d) HA).** |
| Person to report | Part 4 | • If MOH special emergency powers to prevent outbreak or spread of **INFECTIOUS** disease are ever invoked, this includes the ability to require persons to report themselves **(ss. 70(1)(e) & (ea) HA).** |
| Medical examination or testing | | • If MOH special emergency powers to prevent outbreak or spread of **INFECTIOUS** disease are ever invoked, this includes the ability to require persons to submit to *examination* or (in some cases) medical *testing* **(ss. 70(h))(e), (ea) HA).** |
| Isolation, quarantine | Part 4 | • If MOH special emergency powers to prevent outbreak or spread of **INFECTIOUS** disease are ever invoked, this includes the ability to:<br>o Require persons, ships, aircraft, places, buildings, animals etc to be isolated, quarantined **(s 70(1)(f)).**<br>o Require persons, ships, aircraft, places, buildings, animals etc to be tested **(s 70(1)(fa)).**<br>o Require people to remain where they are isolated or quarantined until medically examined and found to be free of infectious disease or undergone preventative treatment **(s 70(1)(h))** |
| Disinfection | Part 4 | • If MOH special emergency powers to prevent outbreak or spread of **INFECTIOUS** disease are ever invoked, this includes the ability to require persons, ships, aircraft, places, buildings, animals etc to be disinfected **(s 70(1)(f)).** |
| Forbid movement of ships, aircraft etc | Part 4 | • If MOH special emergency powers to prevent outbreak or spread of infectious disease are ever invoked, this includes the ability to:<br>o Forbid ships, aircraft, animals, things to come to port or place from any port of place infected with any infectious disease (**s. 70(1)(g)).**<br>o Forbid the removal of ships, aircraft, things from ports, place of isolation or quarantine etc, until they have been disinfected or found to be free on infection etc **(s 70(1)(i)).** |
| Requisition buildings, conveyances, supplies etc | Part 4 | • If MOH special emergency powers during an **INFECTIOUS** disease outbreak are ever invoked, this includes an ability to:<br>Requisition buildings etc for accommodation and treatment of people **(s 71(1)(a))**<br>o Take possession and use buildings, ships, etc for storage/disposal of bodies **(s 71(1)(ab))**<br>o Take possession and use craft for transport of patients, medical and emergency personnel, equipment, etc **(s 70(1)(b))**<br>o Require food, medicines, materials etc to be **delivered (s 70(1)(c))**<br>• Offences to fail to comply with or hinder MOHs exercising certain powers under ss **70-71.**<br>• Minister can declare any place in NZ an infected place if it is infected with a **QUARANTINABLE** disease **(s. 96 HA).** |
| Police support | Part 4 | • HA empowers police to do things to help give effect to the emergency powers of MOH in ss. 70-71 (e.g. powers of entry and inspection, ability to stop ships, aircraft, etc) **(s. 71A HA).** |

***Point of entry (ports, airports)***

| Possible controls or measures | Summary of NZ legislation that may be relevant to the control or measure. (NB: This is a high-level summary only. Please refer to the legislation for full details.) |
|---|---|
| Generic controls / measures needing to be applied at POEs can include:<br><br>• Monitoring baggage, cargo, containers, conveyances, goods etc so they are in a sanitary condition<br>• Keep POE facilities in a sanitary condition<br>• Applying measures to disinfect, decontaminate, disinsect, derat baggage, cargo, containers, conveyances, goods etc<br>• Supervising removal of contaminated food, water, wastewater, etc from conveyances<br>• Monitoring and controlling ship discharge of sewerage, ballast, refuse, etc<br>• Supervising service providers concerning travellers, baggage, cargo containers, conveyances, goods, etc<br>• Ensuring effective contingency arrangements are in place. | Some of these measures can be applied administratively and do not need specific legislative backing. However, there are also a range of legislative provisions that could empower some of the measures at POEs. These include:<br>• The provisions summarised in the tables above from parts 3 and 4 of the Health Act.<br>• Other provisions in the Health Act such as:<br>o Generic powers of entry and inspection for MOHs/HPOs/authorised persons to enter (at reasonable times) any ship, premise, dwellinghouse, land, building to inspect and execute thereon any works authorised under the HA (**s 128 HA).**<br>o Local authorities can authorise EHOs to cleanse/disinfect any premises (includes vessels/aircraft) or articles if necessary to prevent/limit the spread or eradicate an **INFECTIOUS** disease **(s. 81 HA).**<br>o MOH has similar power to require local authorities to cleanse/disinfect premises/articles to prevent/limit the spread or eradicate a communicable disease, or otherwise prevent a danger to health, etc **(s. 82 HA).**<br>o Infected articles can be destroyed if unable to be disinfected **(s. 83 HA).**<br>• The Nuisance provisions in Health Act (some of the nuisances defined in **s. 29** could be used if need to remedy nuisances at POEs (e.g. mosquito or rodent infestations).<br>• Other legislation, including:<br>o Biosecurity Act 1993 – administered by MPI<br>o Building Act 2004 – administered by MBIE with provisions enforced by local councils<br>o Food Act 2014 – administered by the MPI<br>o CDEM Act – administered by DIA<br>o Epidemic Preparedness Act 2006 – administered by the Ministry of Health. |