



# Local Government briefing

**Hon Nanaia Mahuta**  
**Minister of Local Government**

**Title:** Draft paper *Epidemic Preparedness (Local Government Act 2002) Immediate Modification Order 2020*

**Date:** 2 April 2020

## Key issues

This briefing provides you with a draft *Epidemic Preparedness (Local Government Act 2002) Immediate Modification Order 2020* and paper seeking authorisation to submit the Order to the Executive Council, following your feedback and Ministerial and cross-party consultation.

The Order modifies a requirement in the Local Government Act 2002 for newly elected members to make a written declaration before being able to act as a member. The modification will enable newly elected members to act as members while close contact restrictions due to the COVID-19 epidemic are in place.

## Action sought

**Provide** any feedback you may have on the paper;  
**Consult** Ministerial colleagues and coalition and support parties; and  
**Submit** the paper to Cabinet Office for consideration by the group of Ministers with Power to Act on COVID-19 issues.

## Timeframe

As soon as possible

## Contact for telephone discussions (if required)

Name	Position	Direct phone line	Suggested 1 <sup>st</sup> contact
Michael Lovett	Acting Deputy Chief Executive	S.9(2)(a)	✓
Gina Smith	Policy Director		

Return to	Level 9, 45 Pipitea Street,
Cohesion reference	3W2DU3RAJ5R2-671180194-196
Ministerial database reference	LG202000231

## Purpose

1. This briefing provides you with the *Epidemic Preparedness (Local Government Act 2002) Immediate Modification Order 2020* and draft paper to COVID-19 Ministers for your feedback and for Ministerial and cross-party consultation. If there are no changes required to the paper, it can be submitted to Cabinet Office for consideration by the COVID-19 Ministers.
2. The Order will modify the Local Government Act 2002 (LGA02) using the immediate modification order mechanism in section 15 of the Epidemic Preparedness Act 2006 (the Epidemic Act). This will enable newly elected local authority members to act as members while close contact restrictions are in place.

## The Epidemic Act can be used to modify statutory requirements to enable compliance during an epidemic

3. The Epidemic Act provides that while an Epidemic Notice is in force the Governor-General may, by Order in Council made on the recommendation of the Minister of the Crown responsible for the administration of an enactment, modify any requirement or restriction imposed by the enactment.
4. On 24 March 2020, the Prime Minister issued an Epidemic Notice under section 5 of the Epidemic Act.
5. Immediate modification orders are made under section 15 of the Epidemic Act. You can only recommend an Order if you have received written advice from the Chief Executive of the Department stating that in his opinion:
  - 5.1 the effects of an epidemic are such that the requirement or restriction is impossible or impracticable to comply (or comply fully) with; and
  - 5.2 the modifications it makes go no further than is, or is likely to be, reasonably necessary in the circumstances. You must also be satisfied this test is met.
6. On 30 March 2020, the Chief Executive provided you with his written opinion that the test above is met, as per the requirement in section 15(2)(a). On 30 March 2020, you advised that you are also satisfied that the above test is met, as per the requirement in section 15(2)(b).
7. Cabinet has previously invited you to issue drafting instructions to the Parliamentary Counsel Office (PCO) for the preparation of an appropriate Order and to submit it to the group of Ministers with Power to Act on COVID-19 for consideration [CAB-20-MIN-0135]

## The Order will modify Clause 14 of Schedule 7 of the Local Government Act 2002

8. The COVID-19 Response (Urgent Management Measures) Legislation Act 2020 was passed urgently last week to assist in the COVID-19 response. In part, it amended the LGA02 to allow local authority meetings to be conducted wholly by audio or video conferencing while an Epidemic Notice is in force.
9. There is now a related issue around Clause 14 of Schedule 7 of the LGA02. Clause 14 requires newly elected or appointed members to make an oral declaration at a meeting of the local authority, sign a written version of the declaration and have it witnessed by another member or the chief executive of the local authority, before they may act as a member.

10. This is now a potential problem for councils as meetings are likely to be conducted solely by audio or audio-visual link. Modification of this requirement will allow newly elected members to act while close contact restrictions are in place.
11. The Order will modify the requirement by removing the need to provide a written and witnessed declaration before someone can act as a member. Instead, a newly elected member can act having made an oral declaration with a written declaration provided to the chief executive of the local authority as soon as is reasonably practicable.

#### **Further modifications are likely to be needed**

12. We are working with the local government sector to help them address the other challenges they are facing due to the COVID-19 epidemic. This may require legislative change. We will continue to brief you on these issues and whether we consider further modification orders may be needed in the future.

#### **Consultation**

13. The Ministries of Health and Justice, the Treasury, the Crown Law Office, PCO, and the Department of Prime Minister and Cabinet (Policy Advisory Group) have been consulted on this paper.
14. PCO, with advice from the Crown Law Office, has certified that the Order in Council is appropriate for submission to the Executive Council.
15. Once you have provided feedback on the paper, we recommend circulating for Ministerial and cross-party consultation. As there were no concerns raised during agency consultation and the paper does not impact on other portfolios, we consider a shorter time period (2 days) for Ministerial and cross-party consultation would be sufficient. The paper can then be submitted to Cabinet Office for consideration by the COVID-19 Ministers group.
16. Talking points, if needed, are attached at Appendix B.

## Recommendations

17. We recommend that you:

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|----|---|---------------|
| a) | <b>Provide</b> any feedback you may have on the attached paper and <i>Epidemic Preparedness (Local Government Act 2002) Immediate Modification Order 2020</i> ; | <b>Yes/No</b> |
| b) | <b>Consult</b> Ministerial colleagues and coalition and support parties on the attached paper and Order; and  | <b>Yes/No</b> |
| c) | <b>Submit</b> the paper and Order to Cabinet Office to be considered by the COVID-19 Ministers.   | <b>Yes/No</b> |



Michael Lovett  
Acting Deputy Chief Executive  
Central Local Government Partnerships

Hon Nanaia Mahuta  
Minister of Local Government

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**Appendix A: Draft paper and Order**

Proactively Released

Out of Scope

Proactively Released