



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Approval of COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 and amendment of COVID-19 Public Health Response (Infringement Offences) Regulations 2021	Date to be published	1 April 2022

List of documents that have been proactively released

Date	Title	Author
December 2021	<i>Approval of COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 and amendment of COVID-19 Public Health Response (Infringement Offences) Regulations 2021</i>	<i>Office of the Minister for Workplace Relations and Safety</i>
13 December 2021	<i>Approval of COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 and amendment of COVID-19 Public Health Response (Infringement Offences) Regulations 2021</i> <i>CAB-21-MIN-0533</i>	<i>Cabinet Office</i>

Information redacted

YES

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Some information has been withheld for the reasons of Legal professional privilege.



Cabinet

Minute of Decision

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Approval of COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 and Amendment of COVID-19 Public Health Response (Infringement Offences) Regulations 2021

Portfolio **Workplace Relations and Safety**

On 13 December 2021, Cabinet:

COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021

- 1 **noted** that on 26 October 2021, Cabinet agreed to amend the COVID-19 Public Health Response Act 2020 (the COVID-19 Act) to allow for a risk assessment process to be prescribed, which persons conducting a business or undertaking (PCBUs) could then use to determine whether it is reasonable to require vaccination or testing for work [CAB-21-MIN-0436];

- 2 **noted** that on 22 November 2021, Cabinet agreed the detail of a risk assessment tool, including:
 - 2.1 that the vaccination assessment tool specifies four key factors including three factors relating to transmission of COVID-19 and one relating to providing services to vulnerable people;
 - 2.2 that vulnerable people be defined as people who are under the minimum age to be vaccinated; medically exempt from being vaccinated; or at higher risk of severe illness from COVID-19;
 - 2.3 that the work must score a higher risk on at least three of the four factors before it would be reasonable for a PCBU to consider requiring vaccination;
 - 2.4 that the vaccination assessment tool is designed to be applied to particular roles rather than to an entire workforce;[CAB-21-MIN-0495]

- 3 **noted** that on 22 November 2021, Cabinet authorised the Minister for Workplace Relations and Safety to make decisions on any issues that arose during the drafting process [CAB-21-MIN-0495];

- 4 **noted** that under the authorisation referred to in paragraph 3, the Minister for Workplace Relations and Safety has added a requirement that PCBUs must consider the following factors in a situation where the outcome of the tool was that a vaccination requirement would be reasonable and a PCBU intends to decide not to require vaccination:
- 4.1 whether there are any other measures that could reasonably be used to eliminate or minimise the risk associated with unvaccinated workers doing the work;
 - 4.2 the outcomes of the consultation process on the application of the assessment tool and control measures under section 33AB(3) of the COVID-19 Act;
 - 4.3 any other factors the PCBU considers relevant;
- 5 **noted** that that under the authorisation referred to in paragraph 3, the Minister for Workplace Relations and Safety has clarified that the operation of the physical distancing factor in the vaccination assessment tool now relates to whether a worker can reasonably maintain one metre physical distancing from other people;
- 6 **noted** that the COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 will give effect to the decisions referred to in paragraphs 2, 4 and 5 above;
- 7 **authorised** the submission to the Executive Council of the COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 [PCO 24360/9.0];
- 8 **noted** that a waiver of the 28-day rule is sought:
- 8.1 so that the COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations 2021 can come into force on 15 December 2021;
 - 8.2 on the grounds that they are made in response to an emergency, and will not disadvantage any PCBU or worker;
- 9 **agreed** to a waiver of the 28-day rule so that the COVID-19 Public Health Response (Vaccination Assessment Tool) Regulations can come into force on 15 December 2021;

Amendment to the COVID-19 Public Health Response (Infringement Offences) Regulations 2021

- 10 **noted** that the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 were drafted and partway through the Cabinet approval process when the COVID-19 Response (Vaccinations) Legislation Act 2021 was introduced and passed, resulting in new infringement offences in the COVID-19 Act not being assigned a class in the regulations;
- 11 **noted** that an amendment is now needed to the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 to ensure the new infringement offences in the COVID-19 Act align with similar offences in the COVID-19 Public Health Response (Vaccinations) Order 2021;
- 12 **agreed** to amend the COVID-19 Public Health Response (Infringement Offences) Regulations 2021 to classify breaches of the following provisions of the COVID-19 Act accordingly:
- 12.1 section 17B (duty on PCBUs to keep vaccination records): low risk, matching the approach taken in the COVID-19 Public Health Response (Vaccinations) Order 2021;

- 12.2 section 17C (duty on PCBUs to prevent workers from carrying out work unless vaccinated): high risk, matching the approach taken in the COVID-19 Public Health Response (Vaccinations) Order 2021;
- 12.3 section 17D (duty on workers not to do work without vaccination): high risk, matching the approach taken in the COVID-19 Public Health Response (Vaccinations) Order 2021;
- 13 **invited** the Minister for Workplace Relations and Safety to issue drafting instructions to Parliamentary Counsel Office to give effect to the policy decisions in paragraph 12;
- 14 **authorised** the Minister for Workplace Relations and Safety to make decisions on any issues that arise during the drafting process;
- 15 **authorised** the Minister for Workplace Relations and Safety to have Power to Act to submit the regulations to the Executive Council on 20 December 2021 if necessary;
- 16 **noted** that the Power to Act in paragraph 15 above will only be exercised if Cabinet does not meet as scheduled on 20 December 2021;
- 17 **noted** that if the Power to Act in paragraph 15 is exercised, the Minister for Workplace Relations and Safety considers it appropriate to waive the 28-day rule:
- 17.1 so that amendments to the COVID-19 Public Health Response (Infringement Offences) Regulations can come into force on 21 December 2021;
- 17.2 on the grounds that they validate irregularities, and will confer only benefits on the public.

Michael Webster
Secretary of the Cabinet

Secretary's note: As Cabinet is scheduled to meet on 20 December 2021, the Power to Act referred to in paragraphs 15 and 16 is unlikely to be required.