



COVERSHEET

Minister	Hon Michael Wood	Portfolio	Workplace Relations and Safety
Title of Cabinet paper	Epidemic Preparedness (Employment Relations Act 2000 - Collective Bargaining) Immediate Modification Order 2020 Revocation Order 2022	Date to be published	6 May 2022

List of documents that have been proactively released		
Date	Title	Author
March 2022	<i>Epidemic Preparedness (Employment Relations Act 2000 - Collective Bargaining) Immediate Modification Order 2020 Revocation Order 2022</i>	<i>Office of the Minister of Workplace Relations and Safety</i>
31 March 2022	<i>Epidemic Preparedness (Employment Relations Act 2000 - Collective Bargaining) Immediate Modification Order 2020 Revocation Order 2022</i> <i>LEG-22-MIN-0042</i>	<i>Cabinet Office</i>

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister for Workplace Relations and Safety

Cabinet Legislation Committee

Epidemic Preparedness (Employment Relations Act 2000 - Collective Bargaining) Immediate Modification Order 2020 Revocation Order 2022

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Epidemic Preparedness (Employment Relations Act 2000 - Collective Bargaining) Immediate Modification Order 2020 Revocation Order 2022

Policy

- 2 The Epidemic Preparedness (Employment Relations Act 2000 – Collective Bargaining) Immediate Modification Order 2020 (IMO) came into force in April 2020.
- 3 On 7 April 2020, the group of Ministers with Power to Act on COVID-19 matters [CAB-20-MIN-0130] agreed to modify the Employment Relations Act 2000 (the ER Act) to extend timeframes involved in collective bargaining that would otherwise apply, and to allow unions to change the means by which they would ratify a collective agreement (e.g. online balloting, videoconferencing or teleconferencing).
- 4 The provisions in the ER Act modified by the IMO include:
 - 4.1 Notification (Section 43(2)(b)) – Extending the timeframe for drawing the existence and coverage of the bargaining, and the intended parties, to the attention of all employees whose work would be covered. The employer must still do this as soon as possible but the latest date by which they must do so is paused during the Epidemic Notice period.
 - 4.2 Consolidation (Section 50(2) – (3)) – Where an employer receives 2 or more notices from different unions, the timeframe for requesting both notices to be consolidated into bargaining for a single collective agreement is extended, as is the timeframe for unions to reply to a request by either accepting or withdrawing.
 - 4.3 Expiry of a collective agreement (Section 53(3)) – A collective agreement that would otherwise expire will continue in force. The 12 month period would be “paused” or put on hold during the epidemic notice period.

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- 4.4 Ratification (Section 51(1) – (2)) – Can occur by other means where a ratification procedure was to be by post or in person.
- 5 The IMO relies on the Epidemic Preparedness (COVID-19) Notice 2020 (the Notice) which came into force in March 2020. The Notice has been renewed every 3 months since its inception with its most recent renewal being 17 March 2022, due to expire on 17 June 2022.
- 6 The purpose of the IMO was to provide a temporary law change in light of the COVID-19 pandemic to modify the requirements under the ER Act in situations where these would have been impossible or impracticable to comply with.
- 7 The COVID Protection Framework (Framework) commenced in December and signalled a shift away from the Alert Level System in which the IMO was brought into place. I was advised that the four amendments contained in the IMO will not be needed under the Framework as the conditions in s15 of the Epidemic Preparedness Act will no longer be met (the requirements amended in the Employment Relations Act 2000 would no longer be impossible or impracticable to comply with).
- 8 There is a savings provision in the Order which clarifies that the revocation of the IMO will restart the timeframes specified in the ER Act for those collective agreement processes that had timeframes paused by the IMO and the ratification process can be undertaken as originally specified or as notified under the IMO.

Timing and 28-day rule

- 9 The 28-day rule will apply so the Order will commence on 6 May, 28 days after publication in the NZ Gazette, expected on 7 April. This period will give bargaining parties a minimum of 28 days' notice that the timeframes in the ER Act will recommence.

Compliance

- 10 The Amendment Order complies with each of the following:
- 10.1 the principles of the Treaty of Waitangi;
 - 10.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 10.3 the principles and guidelines set out in the Privacy Act 2020 ;
 - 10.4 relevant international standards and obligations;
 - 10.5 the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee

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Regulations Review Committee

- 11 There are no grounds for the Regulations Review Committee to draw the disallowable instrument or regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 12 The draft regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet, subject to the Minister for Workplace Relations and Safety meeting the requirements in section 15 of the Epidemic Preparedness Act.
- 13 As set out above I have complied with these requirements.

Consultation

- 14 I consulted with the NZ Council of Trade Unions and Business NZ prior to my decision to review the IMO. Crown Law Office have provided advice on the process to be followed when revoking the IMO.

Impact analysis

- 15 The Treasury's Regulatory Impact Analysis team has determined that the Revocation Order which revokes the Epidemic Preparedness (Employment Relations Act 2000— Collective Bargaining) Immediate Modification Order 2020 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it repeals or removes redundant legislative provisions.

Publicity

- 16 I intend to inform the social partners that the Order will be revoked as soon as this decision has been confirmed by Cabinet. This will give the parties time to understand what the removal of the Order means for bargaining before the revocation is in force.

Proactive Release

- 17 I intend to release this paper proactively within 30 days. The paper will be published on the Ministry of Business, Innovation and Employment's (MBIE) website.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that I brought this matter to Cabinet in February and Cabinet authorised me to proceed with an Order in Council to revoke the Epidemic Preparedness (Employment Relations Act 2000— Collective Bargaining) Immediate Modification Order 2020 [CAB-22-MIN-0049].

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- 2 **authorise** the submission to the Executive Council of the Epidemic Preparedness (Employment Relations Act 2000-Collective Bargaining (Revocation Date) Immediate Modification Order 2020 Revocation Order 2022.
- 3 **note** the Epidemic Preparedness (Employment Relations Act 2000-Collective Bargaining (Revocation Date) Immediate Modification Order Revocation Order 2022 will come into force on 6 May 2022 which is 28 days after the Order is published in the NZ Gazette on 7 April 2022.

Authorised for lodgement

Hon Michael Wood
Minister for Workplace Relations and Safety

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