



# Briefing to review secondary legislation made in response to COVID-19

Interim report of the Regulations Review Committee

May 2020

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Alastair Scott  
Chairperson

# Briefing to review secondary legislation made in response to COVID-19

## Recommendation

The Regulations Review Committee is considering a briefing to review secondary legislation made for the purposes of responding to the outbreak of COVID-19, and recommends that the House take note of its interim report.

## Introduction

On 29 April 2020, the Regulations Review Committee (RRC) initiated a briefing to review secondary legislation made in response to the outbreak of COVID-19. The purpose of the briefing is for the committee to report on its scrutiny of that secondary legislation. This interim report:

- provides a record of secondary legislation made in response to the outbreak of COVID-19
- highlights key concerns we have about that secondary legislation so those matters can be avoided in future instruments.

In this interim report, we do not make overarching recommendations for government actions. We may do that in a future or final report under this briefing.

## Background

The RRC has a function under Standing Order 318(1) to examine all regulations on behalf of Parliament. This function has important constitutional significance under the principle that Parliament has full powers to make laws,<sup>1</sup> so it retains control over the content of all laws made under powers delegated from Parliament. In this context, “regulations” means all delegated legislation. It includes, for example, the following three categories of instrument:

- legislative instruments that are published on the legislation website
- legislation that the empowering Act says are disallowable by Parliament
- instruments that meet the test for having “significant legislative effect” in section 39(1) of the Legislation Act 2012; that is, where the effect of the instrument is to:
  - create, alter, or remove rights or obligations
  - determine or alter the content of the law applying to the public or a class of the public.

The committee’s role is to check that the Executive is not using its powers to make law in ways that were not intended by Parliament when it delegated those powers. It does not examine the policy behind the instrument, but rather whether the instrument was properly

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<sup>1</sup> Constitution Act 1986, section 15(1).

made and accords with the intention of Parliament as expressed in the empowering enactment. This means that the grounds for drawing a regulation to the special attention of the House under Standing Order 319(2) provide the usual ambit of this scrutiny.<sup>2</sup> Generally, the most common concerns are that the regulation:

- is not in accordance with the general objects and intentions of Parliament (SO 319(2)(a))
- appears to make some unusual or unexpected use of the powers conferred by the enactment under which it is made (SO 319(2)(c)).

The committee is always particularly interested to scrutinise the Executive's use of secondary legislation in national emergencies.<sup>3</sup> That scrutiny role had greater constitutional significance when the House of Representatives adjourned when New Zealand went into Alert Level Four.

## **The story of epidemic secondary legislation so far**

As at 30 April 2020, the RRC had scrutinised 66 instruments made for the purposes of responding to the epidemic. Those instruments are listed in the attached table, divided into legislative instruments and other instruments. We describe those instruments here in two categories:

- instruments made under special powers activated specifically for the epidemic
- instruments made under existing powers to make and amend secondary legislation.

### **Instruments under special powers**

On 24 March 2020, the Prime Minister gave notice of the epidemic under section 5 of the Epidemic Preparedness Act 2006. That notice activated a range of other special powers, including some to make other secondary legislation. The Government has used those powers to make the following types of secondary legislation:

- Epidemic Management Orders (EMO) under section 8 of the Epidemic Preparedness Act 2006. These orders activate legislative provisions in other Acts that are dormant until activated by an EMO. To date, EMOs have activated dormant provisions under:
  - the Social Security Act 2018
  - the Immigration Act 2009
  - the Parole Act 2002
  - the Sentencing Act 2002.
- Immediate Modification Orders (IMO) under section 15 of the Epidemic Preparedness Act 2006. IMOs can modify any requirement of any Act or secondary legislation (subject to some exceptions) as long as the relevant Minister is satisfied that the effect of the epidemic makes the requirement or restriction impossible or impracticable to comply

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<sup>2</sup> <https://www.parliament.nz/en/pb/parliamentary-rules/standing-orders/>.

<sup>3</sup> Regulations Review Committee *Inquiry into Parliament's legislative response to future national emergencies* (2016), I.16B.

with and the modification goes no further than is reasonably necessary in the circumstances. So far, there are seven IMOs modifying requirements of:

- the Social Security Act 2018
- the Local Government Act 2002
- the Employment Relations Act 2000
- the Oaths and Declarations Act 1957
- the Sale and Supply of Alcohol Act 2012
- the Wills Act 2007
- the Protection of Personal and Property Rights Act 1988.
- Health orders under section 70 of the Health Act 1956.<sup>4</sup> To date 10 orders or amendment orders have been made under section 70. These orders:
  - required all people in New Zealand to be isolated or quarantined in their homes
  - required persons arriving into New Zealand by air to be isolated or quarantined
  - required all premises to be closed
  - forbid outdoor congregations.

On 25 March 2020, the Minister of Civil Defence declared under section 66 of the Civil Defence Emergency Management Act 2002 (CDEM Act) that a state of national emergency exists over the whole of New Zealand, owing to the impact of COVID-19. That declaration has since been extended each week. These declarations activate a range of powers in civil defence officials and Police under the CDEM Act (but not powers to make secondary legislation).

### **Instruments under existing powers**

The majority of secondary legislation enacted for the purposes of responding to the outbreak of COVID-19 has been made under existing regulation-making powers. The most common purpose has been to extend regulatory timeframes that cannot be met due to the lockdown. Other purposes include:

- requiring airlines to notify Immigration NZ of people boarding aircraft to New Zealand who have been in a place of concern (high risk of COVID-19) in the previous 14 days
- removing the normal exemption from visa requirements for cruise ship passengers unless a Medical Officer of Health is satisfied there is no quarantinable disease on board
- amending the fundamental rule about not increasing voting rights beyond 20 percent under the Takeovers Act 1993, because COVID-19 has caused a shift in the appropriate balance between objectives of the Takeovers Code
- instructing electrical inspectors about the testing requirements for certain residual current devices being used by District Health Boards in their response to COVID-19

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<sup>4</sup> The section 70 powers are also activated by notices of states of emergency or the authority of the Minister of Health.

- providing financial support to New Zealand beneficiaries and superannuants who are stranded overseas because of the effects of COVID-19.
- prohibiting the importation and use of kits for testing for COVID-19 unless approved by Medsafe.

## **The results of scrutiny**

We have had no concerns with most of the epidemic secondary legislation. However, when we have identified concerns, we have written to the responsible entity describing the concern, suggesting that it be addressed, and asking it to report back to the committee.

We wish to highlight a couple of particular concerns so that they can be avoided in future secondary legislation, whether in response to the epidemic or not.

## **Unauthorised subdelegation of the power to make secondary legislation**

The general principle is that the delegation by Parliament of a power to make legislation cannot be subdelegated unless that is expressly permitted by the empowering enactment.<sup>5</sup> When Parliament delegates its power to make law to an entity, it expects that entity to exercise the power directly.

We have noted a number of examples of epidemic secondary legislation delegating the power to make the law where that is not expressly authorised in the empowering provision. This has been particularly common in relation to the setting of timeframes. We speculate that delegation may appear to be a reasonable method of solving problems with timing, given the uncertainty of the unfolding epidemic.

However, the problem with unauthorised subdelegation of the law-making power is that it could be exercised by an entity, or in a manner, not contemplated by Parliament. Instruments that subdelegate the law-making power may breach the ground in Standing Order 319(2)(c) for drawing an instrument to the special attention of the House. (That is, they appear to make an unusual or unexpected use of the power conferred by the enactment under which they are made.)

## **Unauthorised retrospectivity**

A couple of instruments have applied requirements retrospectively, when retrospectivity is not authorised in the empowering enactment. In each example, the likely harm from the retrospectivity is probably quite limited, and in one case, the reasons for retrospectivity were explained and appeared quite reasonable.

Nonetheless, the existence of good reasons does not prevent instruments that operate retrospectively without express authorisation from being a breach of Standing Order 319(2)(g). (That is, they are retrospective where this is not expressly authorised by the enactment under which they are made.)

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<sup>5</sup> Legislation Design and Advisory Committee Legislation Guidelines (2018), at 14.6 Also *Hawke's Bay Raw Milk Producers Co-operative Co Ltd v New Zealand Milk Board* [1961] NZLR 218.

## **Legislation that is unclear or is drafted as guidance rather than rules**

We have noted a number of instruments that appear to have been drafted in some haste, without the usual policy and legislative design process that should usually accompany all forms of legislation. That has meant that there is a higher rate than normal of errors and provisions that are unclear. We have written to the makers of those instruments, emphasising the importance of law being clear and accessible, and suggesting that these concerns are addressed.

One particular concern has been secondary legislation that does not make a clear distinction between statements that are law and statements that are guidance. This is a problem when the guidance statements are then relied on for enforcement action. Secondary legislation should ideally be drafted to ensure that:

- all aspects of the instrument come within the terms of the empowering enactment
- the requirements in the instrument are clear and certain
- mandatory requirements are clearly identified as such and separated from material that is intended as guidance.

## **Instrument titles should identify their COVID-19 purpose**

With a small number of instruments, although they have been made for the purposes of responding to COVID-19, this is only discernible from a close examination of their content. This is not ideal and reflects a wide variation in drafting and naming practices across secondary legislation. This is particularly noticeable for those instruments that are not published on the legislation website.

In our view, one principle of accessible secondary legislation is that the titles should assist readers to understand their purpose and content. In respect of secondary legislation for the purpose of responding to the outbreak of COVID-19, ideally both the title and the content of the instrument should make this purpose clear by referring to “COVID-19” or similar wording.

## **Appendix A**

### **Committee procedure**

We initiated this briefing on 29 April 2020 and are currently considering it.

### **Committee members**

Alastair Scott (Chairperson)

Harete Hipango

Jo Luxton

Rino Tirikatene

Dr Duncan Webb

Nicola Willis

## Appendix B

### Legislative Instruments for epidemic purposes

Instrument	Made Presented Comes into force	Empowering provision	Summary
<b>Health Act 1956</b>			
<u>Infectious and Notifiable Diseases Order 2020</u>	28 January 2020 3 February 2020 30 January 2020	Health Act 1956, section 3(a). The Governor General (GG) may by Order in Council (OIC) add to the lists of notifiable infectious diseases set out in Schedule 1 the name or description of any disease.	Amendment inserts “Novel coronavirus capable of causing severe respiratory illness” into the list of notifiable infectious diseases.
<u>Infectious and Notifiable Diseases Order (No 2) 2020</u>	9 March 2020 16 March 2020 11 March 2020	Health Act 1956, section 3(a).	Amendment inserts “COVID-19” into the list of notifiable infectious diseases and inserts both “COVID-19” and “Novel coronavirus capable of causing severe respiratory illness” into the list of quarantinable infectious diseases.



Instrument	Made Presented Comes into force	Empowering provision	Summary
<u>Health Act (COVID-19 Alert Level 3) Order 2020</u>	24 April 2020 24 April 2020 27 April 2020 at 11:59pm	Health Act 1956, sections 70(1)(f) and (m)	Revokes the existing section 70(1)(f) and (m) orders and replaces them with new (similar but slightly less restrictive) isolation and quarantine requirements for all people, requirements for closure of premises, and prohibition on outdoors congregations.
<u>Health Act (COVID-19 Alert Level 3) Amendment Order 2020</u>	29 April 2020 20 April 2020 30 April 2020	Health Act 1956, section 70(1)(f) and (m)	Makes amendments to the existing order to add (or delete) various specific activities to/from specific restrictions.
<b>Epidemic Preparedness Act 2006</b>			
<u>Epidemic Preparedness Social Security Act 2018 (Temporary Additional Support) Immediate Modification Order 2020</u>	26 March 2020 27 March 2020 30 March 2020	Epidemic Preparedness Act 2006, section 15.  GG may, by OiC on the recommendation of the Minister responsible for the administration of an enactment, modify any requirement or restriction imposed by the enactment that is impossible or impractical to comply with due to the effect of the epidemic.	Follows the PM issuing an epidemic notice under section 5.  Modifies section 96(1)(c) of the Social Security Act 2018 to remove the requirement to complete an application form in writing.

Instrument	Made Presented Comes into force	Empowering provision	Summary
<u>Epidemic Preparedness (Local Government Act 2002) Immediate Modification Order 2020</u>	9 April 2020 9 April 2020 10 April 2020	<p>Epidemic Preparedness Act 2006, section 15.</p> <p>While an epidemic notice is in force, the GG may, by OiC made on the recommendation of the Minister responsible for the administration of an enactment, modify any requirement or restriction imposed by the enactment.</p> <p>Additional prerequisites – must be impossible or impractical to comply with the requirement; and must go no further than reasonably necessary.</p>	<p>Modifies requirements in the Local Government Act 2002 that a person may not act as a member of a local authority until they have made an oral declaration and a written version has been attested. The modification requires only the oral declaration and that the written attestation is provided as soon as reasonably practicable.</p> <p>This modification is revoked when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.</p>
<u>Epidemic Preparedness (Employment Relations Act 2000—Collective Bargaining) Immediate Modification Order 2020</u>	14 April 2020 15 April 2020 16 April 2020	<p>Epidemic Preparedness Act 2006, section 15.</p>	<p>Modifies timeframes for particular steps in the process of collective bargaining under the Employment Relations Act 2000 by excluding from those timeframes any days during which the epidemic notice is in force under the Epidemic Preparedness Act 2006.</p>

Instrument	Made Presented Comes into force	Empowering provision	Summary
<u>Epidemic Preparedness (Oaths and Declarations Act 1957) Immediate Modification Order 2020</u>	16 April 2020 17 April 2020 17 April 2020	Epidemic Preparedness Act 2006, Section 15.	Modifies the requirements for taking an oath, affirmation, or declaration by making it clear that it can be taken by audio visual or audio link.  It also expands the people who may administer a declaration to include an officer or employee of an entity to which an enactment requires a declaration to be provided.
<u>Epidemic Preparedness (Sale and Supply of Alcohol Act 2012—Licence Application Inquiries) Immediate Modification Order 2020</u>	16 April 2020 17 April 2020 17 April 2020	Epidemic Preparedness Act 2006, Section 15.	Modifies the processing requirements for dealing with an a liquor licence application by giving Police and Medical Officers of Health (MOOH) 30 working days (rather than 15) to file any objection to an application and removes the assumption that if no objection is received in the timeframe, the Police and MOOH do not object.
<u>Epidemic Preparedness (Wills Act 2007—Signing and Witnessing of Wills) Immediate Modification Order 2020</u>	16 April 2020 17 April 2020 17 April 2020	Epidemic Preparedness Act 2006, Section 15.	Modifies the requirements for signing a will by: <ul style="list-style-type: none"> <li>including the alternative of directing another person to sign the will on their behalf via audio visual link and the document then being scanned or photographed, and that copy being sent to a person directed by the will maker to hold it</li> <li>allowing witnesses to be present and sign via audio visual link.</li> </ul>

Instrument	Made Presented Comes into force	Empowering provision	Summary
<u>Epidemic Preparedness (Protection of Personal and Property Rights Act 1988—Enduring Powers of Attorney) Immediate Modification Order 2020</u>	23 April 2020 24 April 2020 24 April 2020	Epidemic Preparedness Act 2006, section 15.  While an epidemic notice is in force, the GG may, by OiC made on the recommendation of the Minister responsible for the relevant enactment, modify any requirement or restriction imposed by the enactment.	Modifies the Protection of Personal and Property Rights Act 1988 and relevant regulations to enable signatories to an enduring power of attorney to sign different copies of the document, enable witnessing by audio visual link, and provides that the full set of signed copies comprise the complete instrument.
<b>Immigration Act 2009</b>			
<u>Immigration (Carriers' Information Obligations) Amendment Regulations 2020</u>	3 February 2020 10 February 2020 5 February 2020	Immigration Act 2009, section 400 and 401.	Amends the Immigration (Carriers' Information Obligations) Regulations 2020 by requiring airlines to notify the CE of Immigration NZ of the name of every person boarding an aircraft scheduled to travel to NZ who has been in a place of concern (at risk of the spread of the novel coronavirus (2019-nCoV)) in the previous 14 days.  These provisions were revoked on 30 April 2020.

Instrument	Made Presented Comes into force	Empowering provision	Summary
<u>Immigration (Carriers' Information Obligations) Amendment (No 2) Regulations 2020</u>	16 March 2020 Not presented yet 15 April 2020	Immigration Act 2009, sections 400 and 401.	Amends the Immigration (Carriers' Information Obligations) Regulations 2010 by amending the name of the disease to "coronavirus disease (COVID-19)" and extending the date on which the earlier amendments are revoked to 30 September 2020.
<u>Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2020</u>	16 March 2020 20 March 2020 18 March 2020	Immigration Act 2009, sections 400 to 402	Amends the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to: <ul style="list-style-type: none"> <li>• clarify that an electronic travel authority ceases to be valid for any person for which the Minister has suspended the waiver of the requirement to hold a visa;</li> <li>• grant the Minister a power to extend, by special direction, the time by which a person arriving in NZ must present themselves to an immigration control area.</li> <li>• state that cruise ship passengers (who normally are exempt under Schedule 3 from visa requirements if they hold an ETA) are only exempt from visa requirement if pratique has been granted to the ship under section 107 of the Health Act.</li> </ul> Pratique is granted to a ship by a MOOH if satisfied there is no quarantinable disease on board.

Instrument	Made Presented Comes into force	Empowering provision	Summary
<b>Social Security Act 2018</b>			
<u>Social Security (Exemption from Stand Down—Coronavirus COVID-19) Amendment Regulations 2020</u>	9 March 2020 16 March 2020 13 March 2020 (but reg 5, which revokes the rest of the amendment, commences 23 November 2020)	Social Security Act 2018, section 440. GG by OiC may make regulation to exempt benefits from a stand down.	Amends the Social Security Regulations 2018 to exempt an applicant for a benefit from the requirement for a stand down period, for applications between 23 March 2020 and 23 November 2020.
<u>Social Security (COVID-19—Temporary Additional Support and Expiry and Regrant of Benefits) Amendment Regulations 2020</u>	26 March 2020 27 March 2020 30 March 2020	Social Security Act 2018, sections 428(1) and (2)(g) and 441(1) and (2)(c) GG may by OiC make regulations for the purposes of: <ul style="list-style-type: none"> <li>prescribing the period or periods for which temporary additional support may be granted</li> <li>specifying circumstances in which MSD may consider an exemption from expiry of a benefit.</li> </ul>	Amends the Social Security Regulations 2018 to: <ul style="list-style-type: none"> <li>give MSD discretion to extend the time for which a person may receive temporary additional support if it considers there are exceptional circumstances</li> <li>expand the circumstances in which MSD may consider an exemption from expiry of specified benefits to circumstances when the beneficiary cannot reasonably leave an area affected by an epidemic notice or other exceptional circumstances.</li> </ul>

Instrument	Made Presented Comes into force	Empowering provision	Summary
			“Exceptional circumstances” includes a state of national emergency, and the effects of the outbreak of a quarantinable disease in respect of which an epidemic notice has been issued and is in force.
<u>Social Security (Rates of Benefits and Allowances) (COVID-19 Recovery Package) Amendment Order 2020</u>	23 March 2020 26 March 2020 27 March 2020	Social Security Act 2018, sections 452 and 452A.  This order is a confirmable instrument. It will be revoked on 31 June 2021 unless earlier confirmed by Parliament.	This Order amends the Social Security (Rates of Benefits and Allowances) Order 2020 to: <ul style="list-style-type: none"> <li>• correct two errors in the principal order (correcting a misdescription of an increase in benefit by moving it from Schedule 2 to Schedule 1; making discretionary increases in two benefits inadvertently omitted from Schedule 2)</li> <li>• make discretionary increases to six benefits to address the economic effects of COVID-19.</li> </ul>
<b>Goods and Services Tax Act 1985</b>			
<u>Goods and Services Tax (Grants and Subsidies) Amendment Order 2020</u>	23 March 2020 24 March 2020 24 March 2020	Goods and Services Tax Act 1985, section 5(6E).  GG by OiC may declare grant or subsidy to not be a taxable grant or subsidy.	This order declares that the following payments (made by the Ministry of Social Development on behalf of the Crown) are not taxable (subject to GST): <ul style="list-style-type: none"> <li>• any payment in relation to wages or other income as a consequence of COVID-19</li> <li>• any payment in relation to leave taken as a consequence of COVID-19.</li> </ul>

Instrument	Made Presented Comes into force	Empowering provision	Summary
<b>Credit Contracts and Consumer Finance Act 2003</b>			
<u>Credit Contracts and Consumer Finance (Exemptions for COVID19) Amendment Regulations 2020</u>	31 March 2020 1 April 2020 1 April 2020	<p>Credit Contracts and Consumer Finance Act 2003, section 138(1)(ab).</p> <p>GG may by OiC exempt any credit contract or other agreement or class of credit contract or other agreement from the application of any provision or provisions of this Act.</p>	<p>Certain consumer credit contracts are exempted from certain requirements of the Credit Contracts and Consumer Finance Act 2003 where the borrower is experiencing financial difficulties due to the economic or health effects of COVID-19.</p> <p>The requirements that do not have to be met relate to:</p> <ul style="list-style-type: none"> <li>the creditor's normal requirements to be satisfied that it is likely that the borrower will continue to make the payments under the agreement without suffering substantial hardship</li> <li>the timeframes for disclosure by a creditor of key information and terms and conditions (but they must be met as soon as reasonably practicable)</li> </ul> <p>This instrument also removes the timeframes and some of the requirements on creditors that receive borrower applications due to unforeseen hardship (but creditors must still make a decision and give reasons as soon as reasonably practicable).</p> <p>Applies only to consumer credit contracts entered into or varied before 31 October 2020.</p>



Instrument	Made Presented Comes into force	Empowering provision	Summary
<b>Governor-General Act 2010</b>			
<u>Governor-General (Annuities) Determination 2020</u>	7 April 2020 1 April 2020 9 April 2020	Governor General Act 2010, section 8.	Determines annuities for former Governors-General. Due to the effect of COVID-19 on the economy, the remuneration authority has not increased the level of annuities.
<b>Land Transport Act 1998</b>			
<u>Land Transport (Motor Vehicle Registration and Licensing) (COVID-19—Extension of Duration of Motor Vehicle Licences) Amendment Regulations 2020</u>	7 April 2020 9 April 2020 10 April 2020	Land Transport Act 1998, section 269.  GG may, by OiC, make regulations prescribing the duration of licences.	Amends the principal regulations to state that a licence that expires between 1 January 2020 and 10 April 2020 or from 10 April until 9 October 2020 has effect during the period 10 April 2020 until 9 October 2020.
<u>Land Transport Rule: COVID-19 Response (No 1) 2020</u>	7 April 2020 9 April 2020 10 April 2020	Land Transport Act 1998, sections 152, 152A, 154, and 158  GG may make ordinary rules for purposes including the safety and licensing for any form of transport.	This rule provides that driver licences, vehicle certifications, endorsements, driver identification cards that expire from 1 January 2020 until a “cut-off date” to be determined by NZTA are valid until the “new expiry date” to be determined by NZTA.  The “cut-off date” and “new expiry date” will be determined by NZTA when COVID-19 restrictions

Instrument	Made Presented Comes into force	Empowering provision	Summary
			are lifted to the extent it is possible and reasonable for inspections and these documents to be renewed, but must not be later than 6 months after the commencement of this rule.
<b>Takeovers Act 1993</b>			
<u>Takeovers Code</u> <u>(Facilitation of Capital Raising in Response to COVID-19) Exemption Notice 2020</u>	8 April 2020 10 April 2020 9 April 2020	Takeovers Act 1993, section 45.  Takeovers Panel may, subject to any conditions, grant exemptions from compliance with the Act to any class of persons, transactions, or offers.	A person who increases their voting control as a result of an allotment of voting securities in various circumstances is exempted from rule 6(1) of the Code in respect of that increase in voting control. The exemptions are subject to conditions. Rule 6(1) is the fundamental rule that a person who controls less than 20% of the voting rights in a code company may not increase their voting rights to more than 20%, and a person who controls 20% or more may not increase their voting rights.  The reasons for the exemptions include that COVID-19 has caused the appropriate balance between the objectives of the Code to shift.

<b>Senior Courts Act 2016</b>			
<u>High Court (COVID-19 Preparedness) Amendment Rules 2020</u>	9 April 2020 9 April 2020 9 April 2020	Senior Courts Act 2016, section 148.	Amends the High Court Rules 2016 to ensure hearings can proceed with remote participation, allow for the electronic filing of documents, and provide for reliance on unsworn affidavits.
<b>Education Act 1989</b>			
<u>Education (Early Childhood Services) Amendment Regulations 2020</u>	21 April 2020 22 April 2020 22 April 2020	Education Act 1989, section 317.  GG may by OiC make regulations providing for the licensing of service providers to provide early childhood services.	New regulation 39A is inserted into the principal regulations and provides the Secretary for Education with powers that may be exercised in response to a state of emergency or an epidemic notice. The Secretary may— <ul style="list-style-type: none"> <li>• impose additional special conditions on licences</li> <li>• suspend compliance with specified requirements</li> <li>• suspend the application of 1 or more criteria that are used in assessing compliance with minimum standards</li> <li>• defer taking regulatory action that is otherwise required of the Secretary.</li> </ul>
<b>Financial Advisers Act 2008</b>			
<u>Financial Advisers (Custodian Assurance Engagement Relief—</u>	23 April 2020 28 April 2020 29 April 2020	Financial Advisers Act 2008, sections 148 and 148A.	This notice amends the timeframes for compliance with specific requirements in three instruments of secondary legislation relating to entities that provide

<u>COVID-19) Exemption Notice 2020</u>		The FMA may exempt any person or class of persons, service or class of service, or any transaction or class of transactions from compliance with any obligation under this Act, the regulations, or the code.	<p>FMCA custodial services. The amendments apply if the custodian:</p> <ul style="list-style-type: none"> <li>believes on reasonable grounds that it is not reasonably practicable for it to comply within the prescribed time period because of the outbreak of COVID-19</li> <li>complies within 6 months of the relevant date</li> <li>gives the FMA notice within 4 months that it is relying on these exemptions.</li> </ul> <p>These new rules apply to timeframes falling before 4 months after 1 August 2020.</p>
<b>Financial Markets Conduct Act 2013</b>			
<u>Financial Markets Conduct (Financial Reporting and Other Relief—COVID-19) Exemption Notice 2020</u>	<p>23 April 2020</p> <p>28 April 2020</p> <p>29 April 2020</p>	<p>Financial Markets Conduct Act 2013, sections 556 and 572.</p> <p>The FMA may exempt any person or class of persons or any transaction or class of transactions from compliance with any provision of Parts 2 to 7, subpart 8 of Part 8, and any of the schedules; or any regulations.</p>	<p>This notice exempts certain financial market participants from compliance with particular timeframes in the Act, the Financial Markets Conduct Regulations, or in four exemption notices under the Act if the participant:</p> <ul style="list-style-type: none"> <li>believes on reasonable grounds that it is not reasonably practicable for it to comply within the prescribed time period because of the outbreak of COVID-19</li> <li>complies within six months of the relevant date</li> <li>gives the FMA notice within 4 months that it is relying on these exemptions.</li> </ul> <p>These new rules apply to timeframes falling before 1 August 2020.</p>

## Appendix C

### Other instruments for epidemic purposes

Instrument	Made Gazetted Comes into force	Empowering provision	Summary
<b>Epidemic Preparedness Act 2006</b>			
<u>Epidemic Preparedness (COVID-19) Notice 2020</u>	24 March 2020 24 March 2020 25 March 2020	Epidemic Preparedness Act 2006, section 5	The PM declares an epidemic. The notice activates the powers to make Immediate Modification Orders under this Act and orders under section 70 of the Health Act 1956. The notice also activates section 24 of the Epidemic Preparedness Act 2006.
<u>Epidemic Preparedness (Epidemic Management-COVID-19) Notice 2020</u>	24 March 2020 24 March 2020 25 March 2020 (but clause 5, 2 April 2020)	Epidemic Preparedness Act 2006, section 8	This notice activates the following dormant sections: <ul style="list-style-type: none"> <li>• Social Security Act 2018, section 64 (power for MSD to grant emergency benefits); section 299 (power in MSD to grant benefits even if claims have not been inquired into); section 443 (make regulations to grant flexibility in relation to benefits)</li> <li>• Immigration Act 2009, section 78 (deems existing temporary entry class visas to be extended); section 337 (judge may deal with matters on documents alone); section 338 (allows judge to consider matters at intervals of not more than 28 days, rather than the usual</li> </ul>

			<p>requirement to bring the person before the judge); section 339 (existing warrants of commitment have effect for 28 days); section 340 (immigration officer and a released person may agree to vary a condition); section 341 (modifies the calculation of the consecutive period for which a person has been detained).</p>
<p><u>Epidemic Preparedness (Epidemic Management - COVID-19 - Parole Act 2002 and Sentencing Act 2002) Notice 2020</u></p>	<p>30 March 2020 30 March 2020 30 March 2020</p>	<p>Epidemic Preparedness Act 2006, section 8(1)(b)</p> <p>PM may, while epidemic notice is in force, with the agreement of the Minister responsible for the administration of the relevant enactment, by notice in the <i>Gazette</i>, state that it activates prospective modification orders made under sections 11 or 12.</p>	<p>This notice activates the following dormant sections:</p> <ul style="list-style-type: none"> <li>Parole Act 2002, section (Parole Board (PB) procedures) and 56A (Probation Officer (PO) may vary a release condition if the PO has applied to the PB)</li> <li>Sentencing Act, sections 54A and 54L (Probation Officer may vary or <del>suspect-suspend</del> conditions of a sentence), 67A (Chief Executive (CE) may authorise PO to remit the hours of community work), section 69A (CE may authorise PO to extend the period during which community work must be done), section 69J (PO may vary curfew), section 80ZH (PO may vary special conditions of home detention), section 80ZI (PO may temporarily vary any post-detention conditions of a sentence).</li> </ul>

<b>Civil Defence Emergency Management Act 2002</b>			
<u>Declaration of State of National Emergency by Minister of Civil Defence</u>	25 March 2020 26 March 2020 Immediately on making this notice.	Civil Defence Emergency Management Act 2002, section 66  Minister may declare a state of national emergency if it appears to the Minister that an emergency has or may occur and the emergency is of such an extent, magnitude, or severity that the civil defence emergency management necessary or desirable is likely to be beyond the resources of the Civil Defence Emergency Management Groups whose areas are affected.	Declaration that a state of national emergency exists over the whole of New Zealand, owing to the impact of COVID-19.  Expires 7 days later.
<u>Declaration by Minister Extending State of National Emergency</u>	31 March 2020 31 March 2020 1 April 2020	Civil Defence Emergency Management Act 2002, section 71  Minister may, before the state of national emergency expires, extend the state of national emergency.	Extends the state of national emergency from the exact time of the expiry of the previous declaration.  Expires 7 days later.
<u>Declaration by Minister Extending State of National Emergency</u>	7 April 2020 7 April 2020 8 April 2020	Civil Defence Emergency Management Act 2002, section 71  Minister may, before the state of national emergency expires, extend the state of national emergency.	Extends the state of national emergency from the exact time of the expiry of the previous declaration.  Expires 7 days later.

<u>Declaration by Minister Extending State of National Emergency</u>	14 April 2020 15 April 2020 15 April 2020	Civil Defence Emergency Management Act 2002, section 71  Minister may, before the state of national emergency expires, extend the state of national emergency.	Extends the state of national emergency from the exact time of the expiry of the previous declaration.  Expires 7 days later.
<u>Declaration by Minister Extending State of National Emergency</u>	21 April 2020 22 April 2020 22 April 2020	Civil Defence Emergency Management Act 2002, section 71  Minister may, before the state of national emergency expires, extend the state of national emergency.	Extends the state of national emergency from the exact time of the expiry of the previous declaration.  Expires 7 days later.
<u>Declaration by Minister Extending State of National Emergency</u>	28 April 2020 29 April 2020 29 April 2020	Civil Defence Emergency Management Act 2002, section 71  Minister may, before the state of national emergency expires, extend the state of national emergency.	Extends the state of national emergency from the exact time of the expiry of the previous declaration.  Expires 7 days later.
<b>Health Act 1956</b>			
<u>Section 70(1)(f) Order - quarantine of arrivals except Cat 2</u>	16 March 2020 N/A 16 March 2020	Health Act 1956, section 70(f) and (h).  A medical officer of health may, if authorised by the Minister, require persons to be isolated or quarantined, and require people to remain in the place in which they are isolated or quarantined until they have been medically examined and found to be free from infectious disease.	All persons arriving in NZ after 1am on 16 March are expected to be quarantined for 14 days.  If measures by those arriving are inadequate for the protection of public health, the medical officer of health directs the persons concerned to be quarantined under section 70(1)(f).  Instruction remains in place for 14 days.



<u>Section 70(1)(m) Health Act Order - closing premises and prohibiting congregating</u>	25 March 2020 N/A 25 March 2020	Health Act 1956, section 70(1)(m) A medical officer of health may, by order published in a newspaper (etc) require premises to be closed until further order or a fixed period, and forbid people to congregate in outdoor places of amusement or recreation of any stated kind or description (whether public or private).	Dr Ashley Bloomfield, Medical Officer of Health (MOOH) for all districts of NZ, <ul style="list-style-type: none"> <li>requires all premises to be closed except those in the Appendix until further notice</li> <li>forbids people to congregate in outdoor places of amusement or recreation until further notice.</li> </ul> “Congregate” means less than 2 metres away for more than 15 minutes. Excluded places are those listed in the Appendix to the order, plus: <ul style="list-style-type: none"> <li>premises necessary for essential business</li> <li>any vehicle, ship, or aircraft, or premises that need to stay open to provide access to that vehicle, ship, or aircraft.</li> </ul> “Essential business” means businesses that are essential to the provision of the necessities of life and those businesses that support them, as listed on the covid19.govt.nz website.
<u>Section 70(1)(f) Order - quarantine of arrivals - all</u>	31 March 2020	Health Act 1956, section 70(f) and (h). A medical officer of health may, if authorised by the Minister, require persons to be isolated or quarantined, and require people to remain in the place in which they are isolated or quarantined until they have been medically examined	Dr Niki Stephanogiannis, Medical Officer for all health districts, made this instruction. All persons (except air crew who have used PPE) arriving in NZ after 1am on 16 March are expected to be quarantined for 14 days.

		and found to be free from infectious disease.	<p>If measures by those arriving are inadequate, he directs the persons concerned to be quarantined under section 70(1)(f).</p> <p>Instruction continues to apply while the epidemic notice for COVID-19 is in force.</p>
<u>Section 70(1)(f) Order – notice to all persons in New Zealand</u>	<p>3 April 2020</p> <p>N/A</p> <p>3 April 2020, 6pm</p>	<p>Health Act 1956, section 70(1)(f).</p> <p>A medical officer of health may require persons to be isolated or quarantined as he thinks fit.</p>	<p>Dr Ashley Bloomfield, MOOH for all districts, requires all persons within all districts to be isolated or quarantined:</p> <ul style="list-style-type: none"> <li>• at their current place of residence (except for essential personal movement) and</li> <li>• maintaining physical distancing (except from fellow residents or to access or provide an essential business).</li> </ul> <p>Essential personal movement is extensively defined, including for:</p> <ul style="list-style-type: none"> <li>• accessing essential business</li> <li>• providing essential business</li> <li>• limited recreational purposes</li> <li>• “shared bubble arrangements”</li> <li>• emergencies, court orders etc</li> <li>• authorised travel.</li> </ul>

<u>Section 70(1)(e), (ea) and (f) Health Act Order - mandatory quarantine of arrivals</u>	9 April 2020 N/A 9 April 2020	Health Act 1956, section 70(1)(e), (ea) and (f).	Requires persons arriving in New Zealand (except for excluded individuals) to report for medical testing and then quarantine and isolation.
<u>Amendment to and Extension of section 70(1)(e), (ea), and (f) orders</u> – isolation and quarantine of all persons arriving in NZ by air	21 April 2020 N/A 21 April 2020	Health Act 1956, section 70(1)(e), (ea) and (f).	This notice amends the notice made on 9 April (which imposed isolation and quarantine requirements on all persons arriving in NZ by air) by: <ul style="list-style-type: none"> <li>• extending its expiry date to 11:59pm on 11 May 2020</li> <li>• including an additional meaning of “excluded arrival”.</li> </ul>
<u>Amendment to and extension of section 70(1)(f) order</u> – isolation and quarantine of all persons in NZ	21 April 2020 N/A 21 April 2020	Health Act 1956, section 70(1)(f)	This notice amends the notice made on 3 April (which imposed isolation and quarantine restrictions on all persons) by: <ul style="list-style-type: none"> <li>• extending its expiry date to 11:59pm on 27 April 2020</li> <li>• extending the exceptions to the general requirement to remain isolated or quarantined to include “necessary work on closed premises”.</li> </ul>
<u>Amendment to section 70(1)(m) order</u> – requirement to close	21 April 2020 N/A	Health Act 1956, section 70(1)(m)	This notice amends the notice made on 25 March (which required premises to close and forbid outdoor congregations) by stating that the

premises and prohibition on outdoor congregations	Instrument states that it has effect from 1800 hours on 21 April 2020, but see concerns about this.		<p>requirement to close premises does not prevent a person from accessing premises for the purposes of carrying out necessary work between 11:59 pm on 20 April 2020 and 11:59pm on 27 April 2020.</p> <p>“Necessary work” includes “work required to prepare the premises for opening (and meet public health guidance) from 11:59pm on 27 April 2020 as well as minimum basic operations required to maintain the condition or value of, or clean the premises [...] and to enable workers to be able to continue to work remotely from their homes.”</p>
<b>Education Act 1989</b>			
<u>Addendum to the Te Aho o Te Kura (Te Kura) Enrolment and Dual Tuition Policy</u>	17 Feb 2020 17 Feb 2020 17 Feb 2020	Education Act 1989, section 7  Minister may from time to time, by notice in the <i>Gazette</i> , fix criteria for enrolment at correspondence school.	Enables schools to enrol domestic students in Te Kura who were overseas on or after 2 February 2020 and are unable to enter New Zealand due to travel disruptions or restrictions related to the novel coronavirus outbreak.
<b>Social Security Act 2018</b>			
<u>Income Support Package (Transitional Assistance) Amendment 2020</u>	23 March 2020 24 March 2020 24 March 2020	Social Security Act 2018, section 101.	Extends the grant of temporary financial assistance to people who experience an overall reduction in assistance as a result of the increase to main benefits on 1 April 2020 made by the COVID-19 recovery package.

<u>COVID-19 New Zealanders Stranded Overseas Support Programme</u>	17 April 2020 21 April 2020 20 April 2020	Social Security Act 2019, section 101.  Minister may approve and establish welfare programmes for the purpose of granting special assistance.	This instrument provides special financial support to New Zealand beneficiaries and superannuants who are stranded overseas because of the effects of COVID-19.
<u>Ministerial Direction – Disability Allowance Amendment 2020</u>	17 April 2020 17 April 2020 20 April 2020	Social Security Act 2019, section 7. The Minister may give MSD directions about MSD's performing or exercising any duties, functions, or powers under this Act and the New Zealand Superannuation and Retirement Income Act 2001.	This amendment to the main direction in relation to the Disability Allowance gives MSD a discretion, for a reasonable period during or after a state of emergency or epidemic is declared, or when those things may be imminent, not to require written verification of expenses incurred by recipients.
<b>Immigration Act 2009</b>			
<u>Special direction— Waiver of the Requirement for a Visa or an Electronic Travel Authority Permitting Travel to New Zealand</u>	2 February 2020 3 February 2020 3 February 2020	Immigration Act 2009, section 69(2)(a)  Minister may, by special direction, waive for a period not exceeding 3 months the requirement to hold a visa permitting travel to New Zealand in relation to any class of persons.	Waives visa requirements for those travelling to New Zealand before 10 February 2020 as part of the assisted departure flight from China chartered by the New Zealand Government.  Expires on 11 February 2020 unless cancelled earlier.

<u>Special Direction— Suspend the Waiver of the Requirement to Hold Transit Visa for Travel to New Zealand</u>	19 March 2020 24 March 2020 19 March 2020	Immigration Act 2009, section 86(4).  Minister may, for period not exceeding 3 months: <ul style="list-style-type: none"> <li>• classify persons to whom a transit visa waiver applies</li> <li>• suspend any transit visa waiver specified in regulations for any class of persons.</li> </ul>	Suspends the waiver of the requirement to hold a transit visa before travelling to and being in New Zealand as a transit passenger (except for Australian citizens and permanent residents (and their immediate family)).  Expires 19 June 2020 unless earlier cancelled.
<u>Special Direction— Waiver of the Requirement for a Visa or an Electronic Travel Authority Permitting Transit of New Zealand</u>	22 March 2020 24 March 2020 22 March 2020	Immigration Act 2009, section 86(4)(a).	Classifies the following people as people to whom a transit visa waiver applies - Any passenger approved by MFAT who: <ul style="list-style-type: none"> <li>• arrives before 3pm on 24 March in transit on way to Australia</li> <li>• arrives before 11:59pm on 29 March in transit on way to Australia.</li> </ul>
<u>Special Direction— Waiver of the Requirement for a Transit Visa to Travel to and be in New Zealand as a Transit Passenger</u>	11 April 2020 16 April 2020 11 April 2020	Immigration Act 2009, section 86(4)(a).  Minister may, for period of three months, classify persons as persons to whom a transit visa waiver applies.	Directs that a transit visa waiver applies to citizens of Chile or those ordinarily resident there (and their immediate family) who are transiting in New Zealand on their way to Chile.  Direction expires on 19 June unless cancelled earlier.

<u>Special Direction— Waiver of the Requirement for a Transit Visa to Travel to and be in New Zealand as a Transit Passenger</u>	10 April 2020 16 April 2020 10 April 2020	Immigration Act 2009, section 86(4)(a).	Directs that a transit visa waiver applies to transit passengers who are not New Zealanders and who are travelling to Auckland from Rarotonga, on Air New Zealand flight NZ945 on 11 April 2020 on way to Doha, Qatar travelling on Qatar Airways flight QR923 on 11 April 2020.  Direction expires 12 April.
<u>Special Direction— Waiver of the Requirement for a Transit Visa to Travel to and be in New Zealand as a Transit Passenger</u>	10 April 2020 16 April 2020 10 April	Immigration Act 2009, section 86(4)(a).	Directs that a transit visa waiver applies to citizens of the 22 countries listed in the schedule (described as Class 1) who are transiting NZ on way to a third country of which they are not citizens but with which NZ has a government-to-government arrangement for the repatriation of those people.
<u>Special Direction— Waiver of the Requirement for a Transit Visa to Travel to and be in New Zealand as a Transit Passenger</u>	10 April 2020 16 April 2020 10 April 2020	Immigration Act 2009, section 86(4)(a).	Same instrument as above, except that it relates to citizens of 2 countries listed in the schedule (described as Class 2).  Those countries are the United States of America and Canada, which are both also included as Class 1 countries in the instrument above.

<u>Special Direction— Waiver of the Requirement for a Transit Visa to Travel to and be in New Zealand as a Transit Passenger</u>	21 April 2020 29 April 2020 21 April 2020	Immigration Act 2009, section 86(4)(a).  The Minister may, by special direction that has effect for a period not exceeding 3 months, classify persons as persons to whom a transit visa waiver applies.	Directs that a transit visa waiver applies to citizens of the 31 countries listed in the schedule who are transit passengers on way to third country with which NZ has a government-to-government assurance to the satisfaction of the Minister of Foreign Affairs or his or her delegated representative, to support their repatriation.
<b>Health Practitioners Competence Assurance Act 2004</b>			
<u>Special Purpose Scope of Practice Response to COVID-19</u>	26 March 2020 27 March 2020 27 March 2020	Health Practitioners Competence Assurance Act 2004, section 12.  Each Authority must prescribe the qualifications for every scope of practice.	This notice appears to prescribe the qualifications for a “Response to COVID-19” scope of practice for Occupational Therapists.
<u>Corrigendum - Special Purpose Scope of Practice Response to COVID-19 (Occupational Therapists)</u>	27 March 2020 27 March 2020	Health Practitioners Competence Assurance Act 2004, section 12	See above



<b>National Animal Identification and Tracing Act 2012</b>			
<u>Extension of Reporting Time Limits Under the NAIT Act 2012</u>	26 March 2020	<p>National Animal Identification and Tracing Act 2012, section 34</p> <p>NAIT organisation may, after consulting the Ministry and, if applicable, the relevant agency, give notice of alternative time limits to those prescribed by regulations made under this Act for the provision of information by any person in charge of an animal.</p>	<p>Amends timeframes for compliance with certain requirements in the National Animal Identification and Tracing (Obligations and Exemptions) Regulations 2012 from 48 hours to 5 business days.</p> <p>The amendment continues until the cessation of the National State of Emergency due to COVID-19.</p>
<u>Amendment of the NAIT Animal Identification Devices Standard</u>	<p>26 March 2020</p> <p>27 March 2020</p> <p>27 March 2020</p>	<p>National Animal Identification and Tracing Act 2012, section 14</p> <p>The NAIT organisation may amend any NAIT animal identification standard for any NAIT identification system.</p>	<p>Document amends the NAIT Animal Identification Devices Standard to extend the timeframes for which a licensee must notify:</p> <ul style="list-style-type: none"> <li>• a device retention issue from 72 hours to 5 business days;</li> <li>• a data upload issue from 24 or 48 hours to 5 business days.</li> </ul> <p>The amendment continues until the cessation of the National State of Emergency due to COVID-19.</p>

<u>Amendment of the NAIT Accreditation of Information Providers Standard and the NAIT Accreditation of Entities Dealing with NAIT Animals Standard</u>	26 March 2020 27 March 2020 27 March 2020	National Animal Identification and Tracing Act 2012, section 19  A NAIT organisation may issue, amend, or revoke an accreditation standard	Amends the NAIT Accreditation of Information Providers Standard and the NAIT Accreditation of Entities Dealing with NAIT Animals Standard by extending timeframes from 24 or 48 hours to five business days.  The amendment continues until the cessation of the National State of Emergency due to COVID-19.
<b>Civil Aviation Act 1990</b>			
<u>Emergency Directive - Expiration of Medical Certificates</u>	26 March 2020 30 March 2020 30 March 2020	Civil Aviation Act 1990, section 27G(4).  Director may issue general directions in relation to: <ul style="list-style-type: none"> <li>conducting medical examinations;</li> <li>providing exceptions for temporary medical conditions;</li> <li>specifying requirements for medical examinations or other clinical matters.</li> </ul> Director may issue directives in emergency situations that expire after 90 days.	Medical certificates with expiry dates between 26 March 2020 and 23 June 2020 remain in force until 24 June 2020. Holders of these medical certificates may continue to exercise the privileges of their aviation licences until 24 June 2020 subject to the Government travel restrictions.

<b>Electricity (Safety) Regulations 2010</b>			
<u>Instruction to Electrical Inspectors Pursuant to Regulation 110 of the Electricity (Safety) Regulations 2010</u>	31 March 2020 2 April 2020 2 April 2020	Regulation 110 of the Electricity (Safety) Regulations 2010.  In any case of urgency, WorkSafe may issue instructions for securing the protection of persons from injury caused by electricity. Failure to comply with an instruction is an offence.	Electrical inspectors must provide certain information to DHBs about the testing requirements for certain residual current devices (RCDs) being inspected and for use with medical devices being used by DHBs in their response to COVID-19. They must also advise the supplier of the RCDs that the required testing has been done.  WorkSafe believes that there could be serious harm to patients if an affected RCD does not trip at the rated current.  Expires six months after commencement.
<u>Instruction to District Health Boards Pursuant to Regulation 110 of the Electricity (Safety) Regulations 2010</u>	31 March 2020 2 April 2020 2 April 2020	Regulation 110 of the Electricity (Safety) Regulations 2010	Requires DHBs to test the RCDs (described above) daily and monthly and send the results to the supplier.  Expires six months after commencement.

<b>Medicines Act 1981</b>			
<u>Notice Under Section 37 of the Medicines Act 1981</u>	22 April 2020 22 April 2020 22 April 2020	Medicines Act 1981, section 37  Minister may prohibit the import, manufacture, packing, sale, supply, or other use of medical devices of any specified kind, either absolutely or subject to such conditions as he thinks fit, for any specified period not exceeding 1 year.	Prohibits the importation, manufacture, packing, sale, supply or use of any COVID-19 test kits unless approved by the Group Manager, Medsafe, Ministry of Health, and intended for the use of licensed practitioners only.
<b>Animal Products Act 1999</b>			
<u>Notice Under the Animal Products Act 1999 (Notice No. MPI 1149)</u>	20 April 2020 21 April 2020 20 April 2020	Animal Products Act 1999, section 45, 167(1)(h) and 167(1)(maa).	Makes amendments to the Specifications for National Microbiological Database Programme, for the period until 31 March 2021, to amend the timeframe when laboratories must review the work of a sample taker submitting NMD samples to the laboratory from “every 12 months” to “as soon as is practicable after the annual Anniversary”.  Amendment is for the purpose of enabling the continuation of sampling and testing for premises and laboratories operating in the context of the logistical challenges posed by COVID-19.