



## BRIEFING

### Amendments to the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 to give legal effect to the self-isolation pilot

<b>Date:</b>	14 October 2021	<b>Priority:</b>	High
<b>Security classification:</b>		<b>Tracking number:</b>	2122-1338

Action sought		
	Action sought	Deadline
Hon Chris Hipkins <b>Minister for COVID-19 Response</b>	<b>Agree</b> to the COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 3) 2021 to give legal effect to the self-isolation pilot.	17 October 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Christina Sophocleous-Jones	General Manager, Self-Isolation Pilot	Privacy of natural persons	✓

The following departments/agencies have been consulted
Crown Law Office, Ministry of Health

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



## BRIEFING

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Date:	14 October 2021	Priority:	High
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#### Purpose

To seek your agreement to the COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 3) 2021 to give legal effect to the self-isolation pilot.

#### Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** that to amend a COVID-19 order you must have had regard to advice from the Director-General about (i) the risks of the outbreak or spread of COVID-19, and (ii) the nature and extent of measures that are appropriate to address those risks.  
*Noted*
- b **Note** that to amend a COVID-19 order you must be satisfied that the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.  
*Noted*
- c **Note** that to amend a COVID-19 order you must consult with the Prime Minister, Minister of Health, and Minister of Justice.  
*Noted*
- d **Agree** to the COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 3) 2021 to give legal effect to the self-isolation pilot.

Agree /  Disagree

Christina Sophocleous-Jones  
**General Manager, Self-Isolation Pilot**  
Managed Isolation and Quarantine, MBIE

14 / 10 / 2021

Hon Chris Hipkins  
**Minister for COVID-19 Response**

14 / 10 / 2021

## Background

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1. On 27 September, Cabinet agreed to the design parameters of the self-isolation pilot [CAB-21-MIN-0386 refers]. Cabinet was advised that amendments to the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 ('the Order') would be necessary to give legal effect to the self-isolation pilot.
2. This briefing seeks your agreement to the COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 3) 2021 ('the Amendment Order') for such purpose.

## COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 3) 2021

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3. The Amendment Order adds a new Part, which is specific to the self-isolation pilot, to the Order. By way of overview, this Part:
  - a. Requires participants to:
    - i. Comply with requirements set out in this Part, and any conditions of the self-isolation pilot (eg that a \$1000 fee be paid)
    - ii. Remain at their place of self-isolation for 14 days unless permitted or required to leave in a very limited set of circumstances
    - iii. Physically distance and use PPE in specific circumstances
    - iv. Not permit anyone to enter their place of self-isolation, except in very limited circumstances, and subject to certain conditions
    - v. Report for and undergo medical examination and testing for COVID-19
    - vi. Comply with monitoring requirements
    - vii. Display a notice provided by MBIE at every entry point to their place of self-isolation
    - viii. Exercise (while wearing a face covering) only within the boundary of their place of self-isolation, and where any outside area is used by no one other than those permitted to enter the place of self-isolation
  - b. Provides for a person to enter managed isolation or quarantine if they breach the requirements or conditions of the pilot, or test positive for COVID-19
  - c. Requires that a person not enter a participant's place of self-isolation unless otherwise permitted
  - d. Requires employers of participants to take all reasonable steps to ensure participants comply with the requirements of the pilot
  - e. Makes breaching a requirement or condition (by an employer, participant, or a person not permitted to enter a place of self-isolation) a breach of the Order.
4. The only design matter on which a decision was not expressly sought from Cabinet, but which is included in this Part, is that participants must display notices that make clear their location is a place of self-isolation. Officials have determined that this requirement is necessary to give effect to Cabinet's decision that it be an offence for a person to enter a participant's place of self-isolation, unless otherwise permitted [CAB-21-MIN-0386 refers].

5. No consequential amendments to the COVID-19 Public Health Response (Air Border) Order 2020 are required at this time. Participants will be manually issued an offline Managed Isolation Allocation System voucher to be compliant with the requirement to have evidence of a confirmed allocation.

### **Public health justification**

6. Under the COVID-19 Public Health Response Act 2020, to make a COVID-19 order you must have had regard to advice from the Director-General about (i) the risks of the outbreak or spread of COVID-19, and (ii) the nature and extent of measures that are appropriate to address those risks.
7. Cabinet noted that the self-isolation pilot will increase the risk of introducing COVID-19 into the community, compared to the risk associated with participants entering Managed Isolation and Quarantine [CAB-21-MIN-0386 refers]. Cabinet also noted that, given the inherent risk associated with running a pilot of this nature, the design parameters of the pilot may be more restrictive than those used for a wider scale roll-out of self-isolation.

### **Consistency with the Bill of Rights Act 1990**

8. Under the COVID-19 Public Health Response Act 2020, to make a COVID-19 order you must be satisfied that the order does not limit or is a justified limit on the rights and freedoms in the New Zealand Bill of Rights Act 1990.

9.

Legal professional privilege

10.

11.

12.

### **Ministerial consultation**

13. Under the COVID-19 Public Health Response Act 2020, to make a COVID-19 order, you must consult with the Prime Minister, the Minister of Justice and the Minister of Health.
14. These Ministers were consulted on the design parameters of the self-isolation pilot – to which Cabinet agreed, and the Amendment Order gives legal effect.

### **Next steps**

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15. If you agree to the Amendment Order, it will come into effect 48 hours after it has been notified in the New Zealand Gazette.
16. In the week of 18 October, we will provide you with final operational plans for the self-isolation pilot for your approval. These plans will detail the end-to-end participant journey,

including details of the testing regime agreed with MOH, monitoring technology, and the evaluation approach.

## **Annexes**

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Annex One: COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 3) 2021

**Annex One: COVID-19 Public Health Response (Isolation and Quarantine)  
Amendment Order (No 3) 2020**

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Attached for signature.

## **COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 3) 2021**

This order is made by the Minister for COVID-19 Response under sections 11 and 15(1) of the COVID-19 Public Health Response Act 2020 in accordance with section 9 of that Act.

### **Contents**

		Page
1	Title	2
2	Commencement	2
3	Principal order	2
4	Clause 7 amended (Part applies to relevant persons)	2
5	New Part 1B inserted	2

#### **Part 1B**

##### **Self-isolation by participants in programme**

15GA	Interpretation	2
	Subpart 1—Requirements for self-isolation by participants	
15GB	Subpart applies to participants	3
15GC	Remaining at place of self-isolation and other restrictions	3
15GD	Medical examination and testing	5
15GE	Monitoring of compliance	5
15GF	Notice must be displayed at place of self-isolation	5
15GG	Period of self-isolation	5
15GH	Leaving place of self-isolation	6
15GI	Isolation or quarantine may replace self-isolation	6
	Subpart 2—Requirements for employers and people entering place of self-isolation	
15GJ	Requirement for employers	7
15GK	Requirement for people entering place of self-isolation	7

## Order

### 1 Title

This order is the COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 3) 2021.

### 2 Commencement

This order comes into force at 11.59 pm on 29 October 2021.

### 3 Principal order

This order amends the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020.

### 4 Clause 7 amended (Part applies to relevant persons)

Replace clause 7(2) with:

(2) However, this Part applies to—

- (a) a relevant worker only to the extent provided in clauses 15DA and 15DB:
- (b) a participant under Part 1B only to the extent provided in clause 15GI.

### 5 New Part 1B inserted

After clause 15G, insert:

## Part 1B

### Self-isolation by participants in programme

#### 15GA Interpretation

In this Part, unless the context otherwise requires,—

**chief executive** means the chief executive of MBIE

**fellow traveller participant**, in relation to a participant (**participant A**), means another person who has been approved by the chief executive as a participant who must self-isolate at the same place of self-isolation as participant A after arriving in New Zealand with participant A

**participant** means a person who—

- (a) is a New Zealand citizen or permanent resident, or a resident who must be granted entry permission, as those terms are defined by section 4 of the Immigration Act 2009; and
- (b) is vaccinated; and
- (c) on application, and at the chief executive's discretion, has been approved by the chief executive as a participant in the self-isolation programme; and



(d) has agreed to the conditions of the self-isolation programme as set by the chief executive

**period of self-isolation**, for a participant, has the meaning given by clause 15GG

**place of self-isolation**, for a participant, means a property or unit that includes a residence or other accommodation and at which they must self-isolate, as approved by the chief executive—

(a) when the person was approved as a participant; or

(b) if the person is moved under clause 15GH(1)(c)(ii)

**requirements of the self-isolation programme** has the meaning given by clause 15GB(2)

**self-isolation programme** means a self-isolation pilot programme operated by the chief executive for the purposes of this Part

**vaccinated**, in relation to a person, means that the person has received 2 doses of the Pfizer/BioNTech COVID-19 vaccine in New Zealand.

#### Subpart 1—Requirements for self-isolation by participants

##### **15GB Subpart applies to participants**

- (1) This subpart applies to a participant who is required by the COVID-19 Public Health Response (Air Border) Order (No 2) 2020 to be isolated or quarantined in accordance with this order.
- (2) The participant must comply with the following (the **requirements of the self-isolation programme**):
  - (a) the requirements of this subpart; and
  - (b) any condition of the self-isolation programme to which they agreed (*see* clause 15GA, paragraph (d) of the definition of participant).
- (3) However, this subpart no longer applies to the participant in the situations described by clause 15GI(1).
- (4) To avoid doubt, a breach of a condition described by subclause (2)(b) is a breach of this order.

##### **15GC Remaining at place of self-isolation and other restrictions**

- (1) A participant must comply with the requirements of this clause throughout their period of self-isolation.
- (2) They must remain at their place of self-isolation, except as permitted by this subpart.
- (3) They must maintain physical distancing (to the greatest extent practicable) from all other persons except any fellow traveller participant.
- (4) They must not permit anyone to enter their place of self-isolation except—

- (a) any fellow traveller participant; or
  - (b) someone who needs to enter—
    - (i) for contactless delivery of goods while wearing a face covering; or
    - (ii) to provide any necessary medical services, including any test for COVID-19; or
    - (iii) to preserve or protect their own or another person’s life, health, safety, or property in an emergency; or
  - (c) someone who—
    - (i) is vaccinated, or is not vaccinated but who the chief executive is satisfied must enter to do something that—
      - (A) is unanticipated, time-critical, and necessary to ensure that the participant can remain in the self-isolation programme or their place of self-isolation; and
      - (B) cannot be done by a person who is vaccinated; and
    - (ii) enters in accordance with the chief executive’s authorisation and any directions or conditions relating to the authorisation.
- (5) They may go outside at their place of self-isolation, including to exercise, if the outside area is—
- (a) within the boundary of the property or unit that is the place of self-isolation; and
  - (b) used only by those allowed to enter the place of self-isolation throughout the participant’s period of self-isolation.
- (6) They—
- (a) must wear a face covering at all times when outside at their place of self-isolation, including when exercising; but
  - (b) may remove the face covering to smoke or to vape (as those terms are defined by section 2 of the Smokefree Environments and Regulated Products Act 1990).
- (7) They must wear personal protective equipment, in the manner directed (to the greatest extent practicable),—
- (a) at all times if they leave their place of self-isolation; and
  - (b) at any other times that they are directed to do so.
- (8) In this clause,—
- contactless delivery** means delivery while maintaining physical distancing from all other persons
- directed** means directed by—
- (a) a medical officer of health or a health protection officer; or

(b) the chief executive, based on the advice of the Director-General  
**face covering** means a covering of any type that covers the nose and mouth of a person.

#### **15GD Medical examination and testing**

A participant must report for, and undergo, medical examination and testing for COVID-19 at any time throughout their period of self-isolation, as directed by—

- (a) a medical officer of health or a health protection officer; or
- (b) the chief executive, based on the advice of the Director-General.

#### **15GE Monitoring of compliance**

To avoid doubt, a participant must comply with any condition of the self-isolation programme to which they agreed that requires monitoring to ensure that they remain at their place of self-isolation.

#### **15GF Notice must be displayed at place of self-isolation**

- (1) A participant must ensure that a notice is clearly displayed at every entry point to—
  - (a) their residence or other accommodation at their place of self-isolation; and
  - (b) their place of self-isolation, if the boundary of the property or unit extends beyond the residence or other accommodation.
- (2) The notice must—
  - (a) be provided to the participant by the chief executive; and
  - (b) include statements that—
    - (i) the location is a place of self-isolation under this order; and
    - (ii) it is an offence to intentionally enter the place of self-isolation without being permitted to do so by this order.

#### **15GG Period of self-isolation**

- (1) A participant's **period of self-isolation** is the period—
  - (a) commencing as soon as practicable after they arrive in New Zealand; and
  - (b) ending at the same time of day as, but on the 14th day after, they arrived in New Zealand if the chief executive is satisfied that the participant meets the low-risk indicators, as determined—
    - (i) as close as is reasonably practicable to the end of that period; and
    - (ii) based on the advice of a suitably qualified health practitioner.
- (2) However, their **period of self-isolation** ends—

- (a) later after any longer period that—
  - (i) is needed to satisfy the chief executive, based on the advice of a suitably qualified health practitioner, that the participant meets the low-risk indicators; but
  - (ii) ends no later than the same time of day as, but on the 28th day after, they arrived in New Zealand; or
- (b) immediately if clause 15GI applies (and Part 1 applies instead of this subpart).

#### **15GH Leaving place of self-isolation**

- (1) A participant is permitted to leave their place of self-isolation—
  - (a) if they need to leave to preserve or protect their own or another person's life, health, or safety in an emergency; or
  - (b) to attend any court, tribunal, New Zealand Parole Board hearing, or other judicial institution that they are required to attend by that institution; or
  - (c) if the chief executive is satisfied, based on the advice of a suitably qualified health practitioner, that the person needs to leave—
    - (i) to access medical services; or
    - (ii) to move to another place of self-isolation; or
    - (iii) to move to a place of isolation or quarantine (for example, for temporary or emergency care while the person is sick); or
    - (iv) for any exceptional reason; or
  - (d) if required by the chief executive, based on the advice of the Director-General, to leave to undergo a test for COVID-19; or
  - (e) if they are required to leave under Part 4 of the Health Act 1956.
- (2) However, a participant leaving their place of self-isolation under this clause must comply with any directions of, or conditions imposed by, the chief executive.

#### **15GI Isolation or quarantine may replace self-isolation**

- (1) This clause applies if a participant—
  - (a) breaches any requirement of the self-isolation programme; or
  - (b) is moved to a place of isolation or quarantine under clause 15GH(1)(c)(iii).
- (2) The participant becomes subject to Part 1 instead of this subpart, and must be isolated or quarantined in accordance with that Part.
- (3) To avoid doubt, the person's **start time** is defined by clause 10(2) (so that their period of self-isolation is counted towards their period of isolation or quarantine under that clause).

## Subpart 2—Requirements for employers and people entering place of self-isolation

### 15GJ Requirement for employers

The employer of a participant must take all reasonable steps to ensure that the participant complies with the requirements of the self-isolation programme.

### 15GK Requirement for people entering place of self-isolation

A person must not enter the place of self-isolation of any participant unless their entry is permitted by clause 15GC(4).

Dated at Wellington this 14th day of Oct 2021.



Minister for COVID-19 Response.

## Explanatory note

*This note is not part of the order, but is intended to indicate its general effect.*

This order amends the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (the **Isolation and Quarantine Order**). It comes into force at 11.59 pm on 29 October 2021.

The amendments relate to participants in a self-isolation pilot programme operated by the chief executive of the Ministry of Business, Innovation, and Employment (the **programme**). A participant must be fully vaccinated in New Zealand, be approved for the programme, and agree to the conditions of the programme, amongst other things.

### *Requirements for self-isolation by participants*

A participant must comply with *subpart 1 of new Part 1B* of the Isolation and Quarantine Order, and with the conditions of the programme. Those apply instead of the requirements of Part 1 of that order, which generally require a person to be isolated or quarantined at a managed isolation or quarantine facility (an **MIQF**).

A participant must remain at their place of self-isolation (an approved property or unit that includes a residence or other accommodation). They must maintain physical distancing and exclude others from entering their place of self-isolation. There are certain exceptions.

A participant must report for, and undergo, medical examination and testing for COVID-19, as directed. They must ensure that a warning notice is displayed at certain locations at their place of self-isolation.

A participant's period of self-isolation is essentially the same as if they were isolated or quarantined in an MIQF.

*Requirements for employers and people entering place of self-isolation*

Under *subpart 2 of new Part 1B* of the Isolation and Quarantine Order, a participant's employer must take all reasonable steps to ensure that the participant complies with the programme's requirements. And a person must not enter a participant's place of self-isolation unless their entry is permitted by certain exceptions.

*Offences*

A person who intentionally fails to comply with the Isolation and Quarantine Order commits an offence against section 26 of the COVID-19 Public Health Response Act 2020 (the **Act**). This applies to a participant who intentionally fails to comply with *subpart 1 of new Part 1B*, including any condition of the programme. Under *subpart 2 of new Part 1B*, it may also apply to a participant's employer or to a person who enters a participant's place of self-isolation.

*Approval by resolution required*

This order must be approved by a resolution of the House of Representatives before the end of the period described in section 16(2) of the Act. If that does not happen, the order is revoked at the end of that period.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*:  
This order is administered by the Ministry of Health.