



BRIEFING

Amendment to Isolation and Quarantine Order to implement your decision to require arrivals from new “very high risk” countries to stay in MIQ for 14 days

Date:	1 December 2021	Priority:	Urgent
Security classification:		Tracking number:	2122-2013

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	Agree to sign the attached COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 5) 2021	1 December 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Kara Isaac	General Manager, MIQ Policy	Privacy of natural persons	✓
Maree Roberts	Deputy Director-General, System Strategy and Policy, Ministry of Health		

The following departments/agencies have been consulted

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



BRIEFING

Amendment to Isolation and Quarantine Order to require arrivals from new “very high risk” countries to stay in MIQ for 14 days

Date:	1 December 2021	Priority:	Urgent
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Purpose

To seek your agreement to:

- amend the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 to give effect to your decision that arrivals from the nine new “very high risk” countries can be required to stay in managed isolation and quarantine (MIQ) facilities for 14 days
- sign the COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order 2020 (No 5) to give effect to this.

Recommended action

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

- a **Note** that on Saturday 27 November you agreed to designate Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, the Seychelles, South Africa and Zimbabwe as “very high risk” countries, as a precautionary measure responding to the Omicron variant of concern and that arrivals travelling from or through these countries should remain in MIQ for 14 days [HR20212642 refers].

Noted

- b **Note** that HR20212642 indicated that the order would be amended to require travellers from these countries to enter MIQ for a 14-day period, which did not take place, but the changes proposed below will give effect to that.

Noted

- c Legal professional privilege

Noted

- d **Agree** to create a requirement in the Isolation and Quarantine Order to require people who have spent time in “very high-risk countries” (excluding Papua New Guinea) in the last 14 days to remain in managed isolation for 14 days, with no requirement to undertake self-isolation afterward.

Agree / Disagree

- e **Note** that to amend a COVID-19 order you must:

- have had regard to advice from the Director-General of Health 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
- have regard to any decision by the Government on how to respond to those risks and avoid, mitigate or remedy the effects of the outbreak or spread of COVID-19 (including considering any social, economic or other factors)

- iii. 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
- iv. consult with the Prime Minister, Minister of Health, and Minister of Justice.

Noted

- f **Note** that we consider these requirements to have been met through your decision to implement the policy on 27 November.

Noted

- g **Sign** the COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 5) 2021 that gives effect to recommendation c) above.

Agree / Disagree

- h **Note** that, subject to your approval, the revised order will come into force at 11.59pm on 1 December 2021

Noted



Kara Isaac
General Manager, MIQ Policy
 Managed Isolation and Quarantine, MBIE

1.12.21



Hon Chris Hipkins
Minister for COVID-19 Response

1.12.21

Maree Roberts
**Deputy Director-General, System Strategy
 and Policy**
 Ministry of Health
 / /


Background

1. On Saturday 27 November, you agreed to designate Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, the Seychelles, South Africa and Zimbabwe as "very high risk" countries, as a precautionary measure responding to the Omicron variant of concern [HR20212642 refers]. On public health advice, you also agreed to amend the Order to require travellers entering New Zealand who had been in these countries in the 14 days immediately preceding their arrival to remain in MIQ for 14 days, rather than the standard 7 days' MIQ plus 3 days' self-isolation that apply to all other travellers. You also agreed that this extended stay would apply to travellers already in MIQ. The Order was not amended to that effect at the time, so these amendments will do so instead.
2. In the short term the Chief Executive has been requiring people from these countries to stay for a period of longer than 7 days because she cannot be satisfied that these people meet low risk indicators (under s10(1)(b)). A person does not meet low risk indicators if information (other than from medical tests) indicates that they may not be at low risk of having or transmitting COVID-19, such as the presence of the Omicron variant in their point of departure for New Zealand. However, this is not a suitable mechanism on an ongoing basis.

The existing mechanism is not appropriate for classes of people or in the long term

3. The Isolation and Quarantine Order provides that a person's period of isolation in an MIQ facility is 7 days. However, where the Chief Executive of MBIE, based on the advice of a suitably qualified health practitioner, is not satisfied that the person meets the low-risk indicators (e.g. the person returns a positive test or there are other reasons to believe they are not at low risk of having or transmitting COVID-19). In that case, a person can be required to stay in MIQ for up to 20 days (s10(1)(b)).
4. This power is intended to deal with individuals or groups of individuals; it was not designed to apply to a class of people arriving from particular countries. For example, the low-risk indicator assessment could be used to assess, on a case-by-case basis, whether individuals from the new very high-risk countries that are already in MIQ should remain for longer than 7 days, but it does not provide a clear basis for a blanket decision that they all must remain for 14 days.

Legal professional privilege



We recommend creating a new mechanism in the Isolation and Quarantine Order

7. We recommend creating a new requirement in the Isolation and Quarantine Order that requires a longer period of isolation in a MIQ facility for all people who have been in these

countries in the 14 days immediately preceding their arrival. This would not be a discretionary power.

8. Providing this requirement would allow for decisions on length of MIQ stay to be made on the basis of countries travellers are coming from, Legal professional privilege
9. The provisions, as drafted, require that all people who have been in these “very high risk” countries in the 14 days immediately preceding their arrival as identified in the Air Border Order, except Papua New Guinea (i.e., the nine countries listed in paragraph 1), will be required to stay in MIQ for 14 days. In addition:
 - a. These people will remain subject to the requirement that the Chief Executive of MBIE may require people to remain in MIQ beyond their ‘period of isolation or quarantine’ if they do not meet ‘low risk indicators’ up to a maximum of 20 days.
 - b. People who are required to remain in MIQ for 14 days, or more, will not be required to self-isolate for 3 days after leaving MIQ
 - c. Fees will be charged on the basis of a 7-day stay for people affected by this change.
10. The **attached** draft COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 5) 2021 gives effect to this change.
11. Any amendments to the list of countries will require amendment to the Air Border Order. In addition, should you wish to extend these requirements to Papua New Guinea, amendments to the Isolation and Quarantine Order would also be required to remove the exception clause. Further work may be required to amend the Maritime Border Order so that isolation and quarantine requirements align.

Operational process

12. The mechanism will affect travellers who arrive in MIQ after it takes effect. Currently, 82 affected people are scheduled to arrive in the next two weeks. Another 147 are expected to arrive in the rest of December, while 319 are scheduled to arrive in January.
13. We have currently identified 68 people in MIQ facilities who have or will need to have their stays extended before 11.59pm tonight. Legal professional privilege
We expect that most arrivals from these countries will not be considered to be a low risk of having or spreading COVID-19 given the presence of the Omicron variant in their point of departure for New Zealand. From 12.00am tomorrow, transitional provisions in the Order will take effect to reinforce this requirement and ensure that it is transparent.
14. **Annex Two** sets out the scheduled release dates (based on a 7-day stay) for affect people who have entered, or are scheduled to enter, MIQ between 21 January and 15 December.

As this is giving effect to a previous policy decision, requirements to amend the order should already be met

You are currently able to make Orders under s11 of the Act

15. Under the COVID-19 Public Health Response Act 2020, an Order may be made if either:
 - a. a state of emergency has been declared (under the Civil Defence Emergency Management Act 2020);

- b. an Epidemic Notice is in force (under the Epidemic Preparedness Act 2006); or
 - c. it has been authorised by the Prime Minister.
16. There is currently an Epidemic Notice in place, which allows Orders to be made under section 11 of the Act.


The Act also sets out further process requirements

17. As the Minister for COVID-19 Response, to make an Order under section 11 of the Act you must:
- a. have received advice from the Director-General of Health about the risks of the outbreak or spread of COVID-19; and the nature and extent of measures that are appropriate to address those risks
 - b. have regard to any decision by the Government on how to respond to those risks and avoid, mitigate or remedy the effects of the outbreak or spread of COVID-19 (including considering any social, economic or other factors)
 - c. be satisfied that the proposed Order does not limit, or is a justified limit, on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA)
 - d. have consulted the Prime Minister, the Ministers of Justice and Health and any other Ministers you consider necessary
 - e. be satisfied that this Order is appropriate to achieve the purpose of the Act.
18. There is also a requirement that an Order be gazetted 48 hours before it comes into effect unless:
- a. the order should come into force urgently to prevent or contain the outbreak or spread of COVID-19
 - b. the effect of the order is only to remove or reduce requirements imposed by a COVID-19 order.

These requirements have been met

19. The proposed changes give effect to a policy decision that has already been made. Officials, and your office, consider that the requirements outlined at paragraph 17 above were met in making your decisions on briefing HR20212642, which included both policy decisions and amending the Air Border Order. This included public health advice, NZBORA analysis and consultation.
20. We also recommend that the 48-hour notice period be waived to ensure the effective operationalisation of decisions made on 27 November in a way that prevents, and limits the risk of, the outbreak or spread of COVID-19 (taking into account the infectious nature and potential for asymptomatic transmission of COVID-19); and is co-ordinated, orderly, proportionate and transparent.

Legal professional privilege



Legal professional privilege



Next steps

23. If you sign the attached Amendment Order today, it will be gazetted and come into force at 11.59pm tonight, 1 December 2021. A section 70 notice will also come into force for the people already in MIQ facilities, to reinforce the requirements imposed using s10(1)(b) to date.

Annexes

Annex One: Draft COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 5) 2021

Annex Two: Scheduled departures for people travelling from or via the 9 new high-risk countries

Annex One: Draft COVID-19 Public Health Response (Isolation and Quarantine) Amendment Order (No 5) 2021

Order is available at this address: <https://www.legislation.govt.nz/regulation/public/2021/0389/latest/LMS610387.html>

Annex Two: Scheduled MIQ departures for people travelling from or via the 9 new high-risk countries until 22 December

Arrival date	Due to depart	Number of people
21/11/2021	28/11/2021	5
22/11/2021	29/11/2021	8
23/11/2021	30/11/2021	5
24/11/2021	1/12/2021	2
25/11/2021	2/12/2021	6
26/11/2021	3/12/2021	8
27/11/2021	4/12/2021	7
28/11/2021	5/12/2021	6
29/11/2021	6/12/2021	7
30/11/2021	7/12/2021	11
1/12/2021	8/12/2021	3
Total: 68 affected people will be in MIQ at 11.59pm tonight		
2/12/2021	9/12/2021	1
3/12/2021	10/12/2021	6
4/12/2021	11/12/2021	7
5/12/2021	12/12/2021	4
6/12/2021	13/12/2021	4
7/12/2021	14/12/2021	5
8/12/2021	15/12/2021	4
9/12/2021	16/12/2021	11
10/12/2021	17/12/2021	3
11/12/2021	18/12/2021	3
12/12/2021	19/12/2021	1
13/12/2021	20/12/2021	19
14/12/2021	21/12/2021	6
15/12/2021	22/12/2021	8
Total: 82 people are estimated to arrive in the next two weeks and will be captured by the Order.		
A further 147 are scheduled to arrive later in December, and 319 in January		

Note that these numbers are liable to change as flights are cancelled or people do not show for their flight.