



BRIEFING

Amendments to the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 to introduce new infringement offences and penalties

Date:	8 November 2021	Priority:	Medium
Security classification:		Tracking number:	2122-1734

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	<p>Agree to the proposed new infringement offences (and penalties) for the Isolation and Quarantine Order.</p> <p>Agree for officials to issue drafting instructions to amend the Isolation and Quarantine Order accordingly.</p>	12 November 2021

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Kara Isaac	General Manager, MIQ Policy	Privacy of natural persons	✓
Privacy of natural persons	Policy Advisor, MIQ Policy		

The following departments/agencies have been consulted
Ministry of Health, Ministry of Justice

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments



BRIEFING

Amendments to the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 to introduce new infringement offences and penalties

Date:	5 November 2021	Priority:	Medium
Security classification:		Tracking number:	2122-1734

Purpose

To seek your agreement to introduce new infringement offences (and associated penalties) to the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020, and to issue drafting instructions to the Parliamentary Counsel Office to draft the required amendment Order.

Recommended action

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

- a **Note** that the Public Health Response COVID-19 Amendment Bill (No 2), is expected to come into force at the end of November, and will increase maximum infringement, criminal penalties and includes powers to make new secondary legislation to complement the existing COVID-19 enforcement regime:
- a. regulations to set levels of infringement penalties within the new maximums prescribed in the Bill
 - b. rules made by the Chief Executive of MBIE relating to the day-to-day running of managed isolation and quarantine facilities (MIQFs).

Noted

- b **Note** that the regulations will create three tiers of infringements, based on the public health risk that an offence poses:
- a. Low risk (\$500 for individuals, \$1,500 maximum court fine)
 - b. Medium risk (\$1,000 for individuals, \$4,000 maximum court fine)
 - c. High Risk (\$4,000 for individuals, \$12,000 maximum court fine)

Noted

- c **Note** that we have identified a number of gaps in the Isolation and Quarantine Order and propose to introduce new infringement offences to fill these gaps.

Noted

- d **Agree** that the following infringement offences should be added to the Order:

- a. Failure to comply with the general requirement to remain in one's room at their place of isolation or quarantine (note: the Bill proposes lifting this requirement into the Act) will result in a high-risk offence with a penalty fee of \$4,000 for individuals.

Agree Disagree

- b. Failure to wear PPE correctly will result in a high-risk offence with a penalty fee of \$4,000 for individuals.

Agree Disagree

c. Failure to maintain social distancing will result in a medium risk offence with a penalty fee of \$1,000 for individuals.

Agree Disagree

d. Members of the public entering MIQFs without requisite permissions will result in a medium risk offence with a penalty fee of \$1,000 for individuals.

Agree Disagree

e. Members of the public who have entered MIQFs without requisite permissions failing to remain on-site for a risk assessment will result in a high-risk offence with a penalty fee of \$4,000 for individuals.

Agree Disagree

f. Relevant workers failing to comply with requirements for self-isolation will result in a high-risk offence with a penalty fee of \$4,000 for individuals.

Agree Disagree

g. Failure to follow directions to use PPE during transfers to and from MIQ (note: this requirement will enter into force as a consequence of the COVID-19 Public Health Response (Air Border) Order 2020 Q3 omnibus amendments) will result in a high-risk offence with a penalty fee of \$4,000 for individuals.

Agree Disagree

e **Agree** that officials issue drafting instructions to the Parliamentary Counsel Office to draft the required amendments to the COVID-19 Public Health Response (Isolation and Quarantine) Order (the Order) 2020 to give effect to the decisions made above

Agree Disagree

f **Note** that under the COVID-19 Public Health Response Act 2020, to amend an Order you must consult with the Prime Minister, the Minister of Justice, the Minister of Health, and may consult with any other Ministers you think fit.

Noted

g **Agree** to forward this briefing to the Prime Minister, Minister of Justice, Minister of Health and any other Ministers you see fit.

Agree Disagree

h **Agree** that this briefing be proactively released with appropriate withholdings under the Official Information Act 1982.

Agree Disagree



Kara Isaac
General Manager,
MIQ Policy, MBIE

8 / 11 / 21



Hon Chris Hipkins
Minister for Covid-19 Response

10 / 11 / 2021

Background

1. The COVID-19 Public Health Response Act 2020 (the Act) and supporting Orders use several enforcement mechanisms as a means of encouraging compliance. Penalties are higher for criminal offences, where requirements in Orders are breached intentionally. Criminal offence penalties are subject to conviction in the court, rather than an instant fee or fine as for infringement offences.
2. However, there are also occasions on when a person's conduct may not be sufficiently serious to warrant full imposition of the criminal law. For these, infringement offences are used. They are issued directly by an enforcement officer and also apply to unintentional breaches of requirements. However, the penalties are lower as a result (currently \$300), and infringement offences must be specified in the Orders.
3. The COVID-19 Public Health Response Amendment Bill 2021 (No 2) (the Bill) includes amendments to these enforcement mechanisms. It will increase the maximum of both criminal and infringement penalties and includes an empowering provision to make regulations that create graduated classes of infringement offences and corresponding penalty fees and fines up to the maximum penalty limits set in the Act.
4. You have previously received advice on the graduated penalties [HR 20212156 refers], which proposed classifying offences into three classes, based on public health risk.
5. The table below outlines the graduated penalty framework.

Infringement offence class	Infringement fee		Maximum court fine	
	Individual	Any other person	Individual	Any other person
Low risk	\$500	\$1,500	\$1,500	\$4,500
Medium risk	\$1,000	\$4,000	\$4,000	\$12,000
High risk	\$4,000	\$12,000	\$12,000	\$15,000

6. The Bill also seeks to introduce a power enabling the Chief Executive of MBIE to make rules for the purpose of ensuring the effective and orderly operation of MIQFs, and to render contravention of a rule an infringement offence.
7. The rules are intended to cover day-to-day things that may not directly relate to public health (these are covered by the Orders) but are required to make sure facilities operate effectively and in an orderly way to achieve their public health purpose. These will be covered in another briefing.

There is a lack of infringement penalties in the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020

8. Returnees in MIQ are subject to a range of requirements within MIQFs. Requirements that relate directly to matters of public health (e.g. physical distancing) are set out in the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (the Order). There are also other requirements set out in the Operations Framework. These are different from those in the Order because they do not directly relate to public health.
9. The latter will be made into rules for returnees in standalone secondary legislation – the contravention of which constitutes an infringement offence.

10. Currently, there are no specific infringement offence provisions related to the contravention of requirements within MIQFs. To address this gap in the MIQ enforcement package, we propose that certain requirements of returnees set out in the Order have infringement offences attached to them. This will require amending the Order to specify which breaches of the Order are infringement offences, as currently provided for under the Act.

We have identified the following requirements in the Isolation and Quarantine Order that should be made into infringement offences

We have considered what should be an infringement offence, with a penalty attached

11. Infringement offences should be of strict liability, easily identifiable, easily enforceable, and appropriate lower-level offences.
12. Penalties must be consistent with the regulations. **Annex one** sets out the proposed infringement classes for the regulations, including drafted inclusion criteria, and an example of the infringement offence.
13. The table below demonstrates suggested infringement offences, corresponding clause in the Order, class of offence, and the corresponding fee.

Requirements under the IQO	Clause	Class	Corresponding fee for individual	Maximum fine for individual
Failure to comply with the general requirement to remain in one's room at their place of isolation or quarantine (note: the Bill proposes lifting this requirement into the Act)	8(2)	High	\$4,000	\$12,000
Failure to wear PPE correctly	8(4)	High	\$4,000	\$12,000
Failure to maintain physical distancing	8(3)	High	\$1,000	\$4,000
Members of the public entering MIQFs without requisite permissions	17	Medium	\$1,000	\$4,000
Members of the public who have entered MIQFs without requisite permissions failing to remain on-site for a risk assessment	18	High	\$4,000	\$12,000

Relevant workers failing to comply with requirements for self-isolation	15E	High	\$4,000	\$12,000
Failure to follow directions to use PPE during transfers to and from MIQ (note: this requirement will enter into force as a consequence of the COVID-19 Public Health Response (Air Border) Order 2020 Q3 omnibus amendments)	8(4)	High	\$4,000	\$12,000

14. The passage of the COVID-19 Public Health Response Amendment Bill (No 2) 2021 considered NZBORA specific to increasing the maximum fees and fines in the Act. The report of the Attorney General under the NZBORA considered and determined the maximum fees were both a justified limitation on the presumption of innocence being strict liability offences, and proportionate as they are tied to an important public health objective.

Next steps

15. Subject to your agreement, Officials will instruct the Parliamentary Order Counsel Office (PCO) to draft an amendment to the Isolation and Quarantine Order.
16. Following PCO completing drafting, the amended Order will be provided to you for signing, with the intention of having the Amendments in force by the beginning of December. This will align with the Regulations under the infringement offence graduated penalty framework being produced by the Ministry of Health (**Annex one**).
17. The Bill is expected to come into force from 20 November, and will increase maximum infringement, criminal penalties and includes powers to make new secondary legislation to complement the existing COVID-19 enforcement regime.
18. We recommend you undertake the required consultation with Ministerial colleagues on this policy paper.

Annexes

Annex One: New Regulations: infringement offence graduated penalty framework

Annex One: New Regulations: infringement offence graduated penalty framework

Proposed infringement class	Draft inclusion criteria	Example infringement offence
Low risk	A breach of an administrative requirement or any other requirement where the worst potential outcome of the breach is a low likelihood of transmission and spread of COVID-19.	If a person breaches the proposed new requirement to provide contact details for MIQ charges.
Medium risk	A breach of a requirement where the worst potential outcome of the breach is a possibility of transmitting or spreading COVID-19 or limiting the capability of the public health response.	If a port company breaches the requirement to display visible isolation and quarantine signage immediately adjacent to every point of egress between the ship and shore.
High risk	A breach of a requirement where the risk of transmitting or spreading COVID-19 as a result of the breach is probably, that it, the risk is not managed.	If a person disembarking a ship breaches the requirement to maintain physical distancing from any person who did not arrive in New Zealand on the same ship or the requirement to wear personal protective equipment if it is necessary for the person to come into close contact with another person who did not arrive in New Zealand on the same ship.