



BRIEFING

For your signature: COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Amendment Order (No 3) 2022

Date:	12 April 2022	Priority:	Urgent
Security classification:		Tracking number:	2122-4048

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	Agree to sign the attached COVID-19 Public Health (Self-isolation Requirements and Permitted Work) Amendment Order (No 3) 2022 that amends the legislative basis for transferring people in self-isolation to a managed isolation and quarantine facility.	12 April 2022

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

The following departments/agencies have been consulted
Ministry of Health

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 Withdrawn |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



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Purpose

This briefing requests that you sign the attached COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Amendment Order (No 3) 2022 (the Amendment Order).

The Amendment Order amends clause 29 of the COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order 2022 (the Self-Isolation Order) updating the legislative framework for transferring people from self-isolation to a managed isolation and quarantine facility (MIQF).

Executive summary

On 30 March 2022, you agreed to amend the Self-Isolation Order [2122-3278 refers]. The attached Amendment Order reflects those policy decisions in the following ways.

- a) *Amending the requirement for those who are transferred to enter and stay in a MIQF.*

The Amendment Order allows people to be transferred on a consent-basis and return to self-isolation if they no longer wish to remain in a MIQF.

- b) *Changing the decision-maker from the medical officer of health or health protection officer to the chief executive of MBIE.*

The Amendment Order allows the chief executive of MBIE to authorise transfers into MIQFs, on the advice of a medical officer of health, health protection officer, or suitably qualified health practitioner

- c) *Allowing the chief executive of MBIE to take into account the capability of an MIQF to accept a transfer.*

The Amendment Order states that the chief executive of MBIE may only authorise a transfer from self-isolation to an MIQF if they are satisfied that there is capability to do so, taking into account the health, safety and wellbeing of the person, the MIQF workers, and the other residents of the MIQF.

These amendments have been made for the following reasons:

- to reflect the current public health risk context in New Zealand, and to as far as possible, replicate the settings of self-isolation for those who need to enter MIQ,
- providing an effective decision-making framework that reflects the way that MIQ works with local public health units, and
- to ensure that the appropriate care and support can be provided for someone who is transferred to an MIQF, by ensuring that the MIQF has the capability to accept that transfer.

The relevant statutory requirements for making an order under section 11 of the COVID-19 Public Health Response Act 2020 have been met.

Recommended action

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

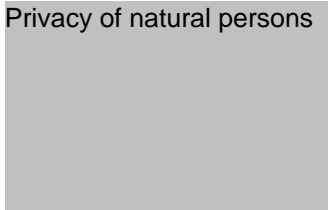
- a **Note** that, on 30 March 2022, you agreed to amend clause 29 of the COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order 2022 to allow for consent-based transfers from self-isolation to managed isolation and quarantine, and to make the chief executive of MBIE the statutory decision-maker [2122-3278 refers].

Noted
- b **Note** that the attached COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Amendment Order (No 3) 2022 amends clause 29 to take into account those policy decisions.

Noted
- c **Agree** to sign the attached COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Amendment Order (No 3) 2022.

Agree Disagree

Privacy of natural persons



Manager, MIQ Policy
Managed Isolation and Quarantine, MBIE

..... / /

Hon Chris Hipkins
Minister for COVID-19 Response

12 / 4 / 2022

Background

1. On 30 March 2022, you agreed [2122-3278 refers] to amend clause 29 of the COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order 2022 (the Self-Isolation Order) to:
 - a. move to a consent-based approach for transfers of people from self-isolation to managed isolation and quarantine facilities (MIQFs),
 - b. to make the chief executive of MBIE the decision-maker for transfers, and
 - c. to allow the chief executive to take into account the capability of a MIQF to accept a transfer.

Contents of the Amendment Order

2. MIQ is an important aspect of the broader COVID-19 Care in the Community model. It provides an alternative option for self-isolation with greater support, including daily health checks, for those who do not have an appropriate place to self-isolate.
3. The Amendment Order changes the legislative basis for the transfer from self-isolation to a MIQF and also amends the essential permitted movement of those who are self-isolating to include the move to an MIQF as a permitted movement.

Moving to a consent-based approach to transfer from self-isolation to MIQFs

4. The attached Amendment Order states that a person must consent to being transferred from self-isolation to a MIQF, and that person may end their time in the MIQF and return to self-isolation at any time during their stay.
5. This change reflects change to the health risk, with the widespread outbreak of COVID-19 in New Zealand. It is no longer deemed proportionate to impose the strict rules of MIQ without consent on those who are transferred from the community. The public health risk context also means that it is no longer proportionate to detain someone in a MIQF if they do not wish to remain there.
6. For clarity, the Order also sets out which of the restrictions from MIQ apply to those who are authorised to enter from the community.
7. Further, the Amendment Order also sets out that a person can be authorised to leave and return to a facility, by the CE MBIE for the same reasons they would be allowed to leave self isolation (except to exercise). It is important to, as far as possible, reflect the settings for those isolating in the community for those who enter MIQ.

Making the chief executive of MBIE the decision-maker

8. Currently, a medical officer of health (MOOH) or health protection officer (HPO) is the currently the sole decision-maker for transfer from self-isolation to a MIQF. The attached Amendment Order changes this by:
 - a. giving the chief executive of MBIE the ability to **authorise** a person to be transferred into a MIQF (instead of requiring a decision from a MOOH or HPO)
 - b. requiring the chief executive of MBIE to be satisfied a MOOH, HPO, or suitably qualified health practitioner has determined that a person does not have an adequate place to self-isolate

- c. requiring the person being transferred to consent to the transfer, and
 - d. requiring the chief executive to be satisfied that the relevant MIQF has the capability and capacity to take the transfer.
9. This will replicate the process that is currently used to authorise persons arriving by air to enter MIQFs (e.g. quota refugees and arrivals from Afghanistan).

Taking into account the capability of MIQFs to accept transfers

10. There have recently been instances of people being transferred from self-isolation to an MIQF where the MIQF did not have the appropriate capability to accommodate the needs of the person being transferred.
11. While managed isolation and quarantine (MIQ) can provide additional support to standard self-isolation, resources are not available to provide additional or tailored support.
12. By taking capability into account, the risk of a person being transferred to an MIQF that does not have the appropriate support in place can be mitigated.

Statutory requirements and process

13. The COVID-19 Public Health Response Act 2020 (the COVID-19 Act) sets out the requirements that must be met before an order may be made.
14. The COVID-19 Act states that you must have regard to the Director-General’s advice regarding the risks of the outbreak or spread of COVID-19 and the nature and extent of the measures that are appropriate to address those risks. The COVID-19 Act also states that you do not need to receive the specific advice about the content of a proposed amendment to an order.
15. The Director-General’s recent advice regarding the current outbreak of COVID-19, and requiring the self-isolation for community cases and household contacts, is sufficient to meet the statutory requirement, without requiring separate advice for the amendments to clause 29.

New Zealand Bill of Rights Act 1990

16. Legal professional privilege

17.

18.

Ministerial consultation

19. The COVID-19 Act requires you to consult the Prime Minister, the Minister of Justice, and the Minister of Health before making a COVID-19 order.
20. The offices of the Prime Minister, the Minister of Justice, and the Minister of Health were consulted on this Amendment Order. No feedback was received.

Purposes of the COVID-19 Act

21. Before making a COVID-19 order, you must be satisfied that the order is appropriate to achieve the purpose of the COVID-19 Act.
22. The purpose of the COVID-19 Act was considered when the Self-Isolation Order was initially made in February 2022. The Amendment Order does not change the Self-Isolation Order in a way that it no longer achieves the purpose of the COVID-19 Act.

Agency collaboration

23. The Ministry of Health and MBIE have been working in close collaboration on the drafting of the attached Amendment Order.

Next steps

24. If you agree to sign the attached Amendment Order on or before Tuesday 12th April 2022, it will come into force at 11.59pm on Thursday 14th April 2022.
25. Updated guidance relating to the process of transferring people from self-isolation to an MIQF will be sent to the relevant Public Health Units and MIQFs.

Annexes

Annex One: Signature copy of the COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Amendment Order (No 3) 2022

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Signature version of the Order has been sent to your office separately from the Parliamentary Counsel Office.

The Order is available here: <https://www.legislation.govt.nz/regulation/public/2022/0106/latest/LMS678398.html>