



BRIEFING

Amendments to Orders under the COVID-19 Public Health Response Act to give legal effect to changes to isolation requirements for border arrivals to New Zealand

Date:	11 November 2021	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2122-1733

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	Agree to the COVID-19 Public Health Response (Isolation and Quarantine and Maritime Border) Amendment Order 2021 to give legal effect to the changes to isolation requirements for border arrivals to New Zealand	11 November 2021

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

The following departments/agencies have been consulted
Crown Law, 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 Withdrawn |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



BRIEFING

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Purpose

To seek your agreement to the COVID-19 Public Health Response (Isolation and Quarantine and Maritime Border) Amendment Order 2021, which amends the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 and the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 to give legal effect to the 14 November changes to isolation requirements for border arrivals to New Zealand.

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 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.
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 sign the COVID-19 Public Health Response (Isolation and Quarantine and Maritime Border) Amendment Order 2021 which gives legal effect to the changes to isolation requirements for border arrivals to New Zealand.

Agree / Disagree

Privacy of natural persons

Hon Chris Hipkins
Minister for COVID-19 Response

Acting General Manager, MIQ Policy
Managed Isolation and Quarantine, MBIE

11 / 11 / 21

12 / 11 / 2021

Background

1. On 28 October, Ministers with Power to Act on COVID-19 matters agreed to reduce the duration of stay in Managed Isolation and Quarantine (MIQ) for border arrivals from 14 days to 7 days (subject to meeting required public health criteria), and that people exiting MIQ be required to self-isolate until receipt of a negative day nine COVID-19 test in the community [HR-2021-2360 refers]. Ministers agreed that these changes will take effect from 14 November.
2. On Thursday 4 November and Friday 5 November, the Ministry of Health and MBIE respectively provided you with companion briefings outlining operational and legislative changes required to give effect to the new isolation period [HR 20212389 and BR 2122-1661]. On 5 November you agreed to amend the COVID-19 Public Health Response (Isolation and Quarantine) Order 2020 (the Isolation and Quarantine Order) and the COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 (the Maritime Border Order) to give effect to these changes.
3. This briefing seeks your agreement to sign the COVID-19 Public Health Response (Isolation and Quarantine and Maritime Border) Amendment Order 2021 (the Amendment Order).

COVID-19 Public Health Response (Isolation and Quarantine and Maritime Border) Amendment Order 2021

4. The Isolation and Quarantine Order sets out the required isolation period for air arrivals into New Zealand. The Isolation and Quarantine Amendment Order seeks to change this period from 14 days to 7 days in Managed Isolation and Quarantine (MIQ) followed by 3 days of self-isolation and receipt of a negative day 9 COVID-19 test.
5. By way of overview, the Amendment Order does this by amending the required number of days for MIQ under clause 10 of the Isolation and Quarantine Order from 14 to 7 days. The period of MIQ for a person who refuses a COVID-19 test is amended from a maximum of 28 days to a maximum of 20 days.
6. The Amendment Order creates a new Part - Part 1C – to the Isolation and Quarantine Order which provides for the self-isolation component of the isolation period. Part 1C outlines the processes which must be followed during self-isolation, including that people must:
 - a. take the fastest and most direct route practicable to their place of self-isolation,
 - b. stay in their place of self-isolation except in limited circumstances (see below),
 - c. not permit any other person who does not live in their location of isolation to enter the place of self-isolation except in limited circumstances.
7. Part 1C includes that the period of self-isolation ends upon receipt of a negative day 9 test. As such, the Amendment Order creates a clause requiring individuals who are undertaking self-isolation to get a test on day 9 of their isolation period.
8. You received advice earlier this week which noted that there will be no process established for people to apply for an exemption from the three day self-isolation requirements, but that the new Isolation and Quarantine Order will make it clear when a person can leave self-isolation during the three days [BR 2122-1773 refers]. Reasons to leave include:
 - a. to access an essential health service that cannot be deferred until after the end of the period of self-isolation;

- b. to attend any court, tribunal, New Zealand Parole Board hearing, or other judicial institution, to the extent that they are required to attend by that institution;
 - c. if necessary to preserve their own or any other person's life, health, or safety, to move to another place of self-isolation or temporary or emergency care;
 - d. to visit a dying relative who is not expected to live beyond the person's period of self-isolation under this Part;
 - e. to visit the body of a relative prior to a funeral or tangihanga, if they will not be able to visit the body after the period of self-isolation under this Part has ended (in this case, the person is not permitted to attend the funeral or tangihanga).
9. People leaving their place of self-isolation are expected to adhere with IPC protocols. In the instance of reasons d and e these are controlled environments (e.g. hospitals with strict IPC protocols) and the number of people the person will come into contact with is limited and controlled. Funerals and tangihanga are not permitted as the public health risk associated with these larger gatherings with potentially vulnerable attendees is too great.

Self-isolation pilot

10. The Amendment Order also amends Part 1B of the Isolation and Quarantine Order to change the duration of isolation for the self-isolation pilot to 10 days from 14 days, to reflect public health advice and reflect changes to the MIQ requirements. The duration of isolation for participants of the pilot who refuse a COVID-19 test has been shifted from a maximum of 28 days to a maximum of 20 days.

Transitional arrangement to support the shift to 7-day MIQ period

11. On 14 November, there will be approximately 2,600 people who are between day 7 and day 14 of their MIQ stay, and we have identified several operational and logistical challenges identified with releasing these people at once.
12. Legal professional privilege
 the Amendment Order creates a transitional provision in the Isolation and Quarantine Order which will allow the Chief Executive of MBIE to require people who are in MIQ as at 11:59pm on 13 November 2021 to remain in MIQ for as long as reasonably necessary after their period of isolation to enable a coordinated, orderly and proportionate departure from the place of managed isolation. This transitional provision will remain in force until 11:59pm 17 November 2021.

Allowing people in exceptional circumstances to stay in MIQ beyond 7 days

13. The Amendment Order creates a clause which provides for the Chief Executive of MBIE to allow, in exceptional circumstances related to preventing, and limiting the risk of, the outbreak or spread of COVID-19, a person's period of managed isolation to end up to 7 days later than it would otherwise end. Exceptional circumstances may include where an individual or group is unable to self-isolate for the 3-day period in accordance with the Isolation and Quarantine Order.
14. We expect this to apply for groups such as refugees, Afghanistan returnees, Cargo crew servicing the Pacific, fishers, and Antarctic Programmes Workers [BR 2122-1773 refers].

COVID-19 Public Health Response (Maritime Border) Order (No 2) 2020 amendments

15. Consistency across the air and maritime borders is important. The length of isolation in the Maritime Border Order is reduced from 14 days to 10 days to align isolation periods across the air and maritime borders. The amendment order amends clauses 15(2)(d)(i), 17(1), 17(3), 17(4), 19(1)(b), 19(2)(b) and 20(4)(ii) of the Maritime Border Order to enable this alignment. All other settings continue to apply as usual.

Public health justification

16. 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 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.
17. The Ministry of Health and MBIE have provided advice to you proposing and outlining the change to a 7 day MIQ model followed by 3 days of self-isolation [HR 20212360, HR 20212389, BR 2122-1661 refers]. This advice is based on public health advice provided by the Ministry of Health assessing the nature and extent of the risk posed, and justifying the change in isolation duration.
18. By way of overview, the public health advice is based upon evidence that the incubation period for the Delta variant is shorter than for previous strains of the virus. As such, 10 days overall of isolation with enhanced testing and IPC protocols is an appropriate shift. These changes also recognise the high vaccination rates among arrivals and the pre-departure test requirement for arrivals. The ability to move to self-isolation reflects the low likelihood that people will have COVID-19 following the day 6 test, and the assurance this provides.
19. The changes described for clauses 15(2)(d)(i), 17(1), 17(3), 17(4), 19(1)(b), 19(2)(b) and 20(4)(ii) of the Maritime Border Order are appropriate, as they are consistent with the air border, and proportionate to the public health risk. The public health advice is that amending the Maritime Border Order to be consistent with the requirements for air border arrivals as outlined under the Isolation and Quarantine Order is appropriate.

Consistency with the Bill of Rights Act 1990

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Legal professional privilege

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Ministerial consultation

26. Under the COVID-19 Public Health Response Act 2020, to make or amend a COVID-19 order, you must consult with the Prime Minister, the Minister of Justice and the Minister of Health.
27. Cabinet deferred decisions on these changes to Ministers with Power to Act on COVID-19 Matters, which includes the Prime Minister and the Ministers of Health and Justice, who were consulted on and agreed to the changes outlined in this briefing. The Amendment Orders give legal effect to these agreed changes.

Next steps

28. The Parliamentary Counsel Office will separately provide you the Amendment Order tomorrow morning for signing. In order to ensure that the Amendment Order comes into force at 11.59pm on 13 November, we recommend that you sign the Amendment Order tomorrow by 5pm.

NB: A link to the order can be found here: <https://www.legislation.govt.nz/regulation/public/2021/0365/latest/LMS595988.html>