

Briefing

Policy decisions: secondary legislation for COVID-19 infringement offence penalties

Date due to MO: 6 October 2021 **Action required by:** 12 October 2021

Security level: IN CONFIDENCE **Health Report number:** 20212156

To: Hon Chris Hipkins, Minister for COVID-19 Response

Contact for telephone discussion

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Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <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 Withdrawn | |

Comment:

Policy decisions: secondary legislation for COVID-19 infringement offence penalties

Security level: IN CONFIDENCE **Date:** 6 October 2021

To: Hon Chris Hipkins, Minister for COVID-19 Response

Purpose of report

1. This report provides you with proposals for policy decisions on secondary legislation to support setting and operationalising COVID-19 infringement offence penalties, including:
 - a. Proposal One: setting a framework to define classes of infringement offence and corresponding penalties in regulations and prescribe the infringement offence class for infringement offences set out in Orders
 - b. Proposal Two: using the framework to prescribe the infringement offence class for the infringement offences contained in the COVID-19 Public Health Response Amendment Bill (No 2) 2021 (the Bill) in regulations.

Summary

2. The Bill includes powers to make regulations to set levels of infringement penalties within the new maximum penalties prescribed in the Bill. You received an update regarding the secondary legislation being developed to support enforcement in September [HR20211709 refers], which included the development of regulations to give effect to a graduated penalty framework for infringement offences.
3. Cabinet Business Committee authorised you to make policy decisions for the drafting of these regulations [CBC-21-MIN-0102 refers].
4. The regulations are being developed concurrent to the Bill's passage. Agency consultation was undertaken between 24 and 29 September and the resulting proposals are provided for your agreement and authorisation to instruct Parliamentary Council Office to draft.
5. Regulations are proposed to:
 - a. Set a framework that defines infringement offence classes based on the public health risk presented by breaching public health measures. Corresponding penalties are assigned to each class spanning fees for individuals and any other persons, and court-imposed fines (**Proposal One**).
 - b. Apply this framework to infringement offences contained in the Bill relating to management of movement in Managed Isolation and Quarantine Facilities (MIQF) and obtaining contact information for MIQF invoicing to set the appropriate penalties for each offence (**Proposal Two**).

6. Orders under the Act would be amended to set penalties by reference to the framework set out in the regulations.

Recommendations

We recommend you:

- a) **Note** that you are authorised by Cabinet Business Committee to make policy decisions for regulations to set infringement offence penalties enabled in the COVID-19 Public Health Response Amendment Bill (No 2) 2021 (the Bill) [CBC-21-MIN-0102 refers] **Yes/No**
- b) **Approve** the framework setting out low, medium and high-risk infringement offence classes and corresponding penalties in Proposal One **Yes/No**
- c) **Approve** the infringement offence classes assigned to the infringement offences in Proposal Two for sections 32P(1) and 32T(1) and (2) of the Bill as High Risk, Low Risk and Low Risk respectively **Yes/No**
- d) **Authorise** Ministry of Health Officials to instruct Parliamentary Council Office (PCO) to draft the regulations containing Proposal One and Proposal Two **Yes/No**
- e) **Note** that your policy decisions will be conditional on any amendments to the Bill related to infringement offences required through the Select Committee process **Yes/No**
- f) **Note** that operationalising the infringement offence classes and penalties framework will require amendments to Orders to specify the class and penalty for each listed infringement offence **Yes/No**
- g) **Approve** the application of the framework to existing infringement offences contained in Orders in Appendix Two to set the infringement class for each infringement offence at different levels of community transmission risk **Yes/No**
- h) **Authorise** Ministry of Health Officials to instruct PCO to draft the necessary amendments to Orders to operationalise the new penalty regime for infringement offences contained in Orders, including specifying the infringement offence class and penalty for each listed infringement offence and separating existing orders that contain multiple behaviours that present more than one level of public health risk **Yes/No**



Maree Roberts
Deputy Director-General
System Strategy and Policy
Date: 6 October 2021

Hon Chris Hipkins
Minister for COVID-19 Response
Date:

Policy decisions: secondary legislation for COVID-19 infringement offence penalties

Background

1. The COVID-19 Public Health Response Act 2020 (the Act) and supporting Orders use an infringement offence mechanism as an administratively efficient method of encouraging compliance with public health requirements by imposing a set financial penalty for breaches of certain requirements contained in Orders.
2. The current penalty for breaching an infringement offence is \$300. The COVID-19 Public Health Response Amendment Bill (No 2) 2021 (the Bill) would increase the maximum penalties for infringement offence breaches as follows:

Applicable group and fee/fine type	Maximum fee/ fine	When this type of fee/fine could apply
Infringement fee for an individual	\$4,000	An instant fee issued with an infringement notice to an individual where a breach has occurred.
Infringement fee for any other person	\$12,000	An instant fee issued with an infringement notice to a Person Conducting a Business or Undertaking (PCBU) where a breach has occurred.
Court-imposed fine for an individual	\$12,000	A fine imposed by the Court for an individual. An example of when an infringement notice would go to Court could include if the person issued the instant fee disputes this.
Court-imposed fine for any other person	\$15,000	A fine imposed by the Court for a PCBU. An example of when an infringement notice would go to Court could include if the PCBU issued the instant fee disputes this.

3. The Bill also proposes new powers to create regulations that prescribe:
 - a. penalties for infringement offences up to the maximum penalty amounts
 - b. different penalties for different infringement offences or classes of infringement offences, defined in any way so that (for example):
 - the regulations may prescribe a fixed fee or fine, or different infringement fees or fines for an infringement offence under section 32P(6) or 32T(3)
 - a COVID-19 order may specify that an infringement offence specified in a COVID-19 Order belongs to a certain class (with corresponding penalties)
 - a rule made under section 32Q may specify that an infringement offence for a breach of the rule belongs to a certain class (with corresponding penalties).

- c. the form of infringement notices and reminder notices, and the information to be included in the notices.
4. The Cabinet Business Committee authorised you to make policy decisions for the drafting of these regulations [CBC-21-MIN-0102 refers]. With this delegation, the Treasury has subsequently advised that Regulatory Impact Analysis (RIA) requirements are not triggered for these proposals.
5. You received indicative advice about the proposed infringement offence classes and corresponding penalties in September [HR 20211709 refers]. Agency consultation on these proposals is now complete, and this report sets out refined proposals for your policy decisions, including:
 - a. **Proposal One:** setting a framework to define classes of infringement offence and corresponding penalties in regulations and prescribe the infringement offence class for infringement offences set out in Orders
 - b. **Proposal Two:** using the framework in Proposal One to prescribe the infringement offence class for infringement offences contained in sections 32P(6) or 32T(3) of the Bill in regulations.
6. Regulations are not proposed for the form of infringement notices and reminder notices. The Bill enables the forms of notices to be set out in Schedule 3 of the Act or in regulations. The current form of infringement notice and reminder notice is specified in Schedule 3 and no material changes are required to operationalise the Proposals One, Two or Three.

Out of scope

7. The proposals in this report do not:
 - a. consider whether a certain behaviour should be an infringement offence
 - b. consider the appropriateness of the maximum infringement offence penalties set in the Act
 - c. prescribe the role of enforcement officers
 - d. empower enforcement officers to decide whether a particular infringement offence presents low, medium or high risk
 - e. empower enforcement officers to determine the penalty level for infringement offences
 - f. restrict enforcement officers from exercising their discretion in imposing infringement notices depending on circumstances.
8. The proposals must be flexible for use with both current and future infringement offences.

Approach to developing the regulations

9. A cross-agency working group of officials was established to design the proposed infringement offence penalty framework. Members of this working group included representatives from the Ministry of Health, MBIE, Ministry of Justice, Crown Law Office, New Zealand Customs Service, New Zealand Police, WorkSafe and Ministry for Pacific Peoples.

10. Wider agency consultation was undertaken between 24 and 29 September. Relevant agency feedback is provided for each proposal below.

Proposal One: Infringement offence classes and penalties framework

Purpose of framework

11. The framework sets out the proposed categories of infringement offences, the inclusion criteria for each category and the corresponding penalty for any infringement offence assigned that category. Setting the classes and corresponding penalties in a framework promotes consistent and commensurate penalties for breaches that result in a similar risk of spreading or transmitting COVID-19.

Application of framework

12. It is intended that infringement offences must be classified in their relative legislative instrument (i.e. Regulation, Rule or Order) as one of the infringement offence classes based on the stated inclusion criteria in the framework, and prescribed the associated fee/fine.
13. Officials propose that an infringement offence may be assigned a different class at different levels of community transmission risk, to reflect the variation of risk. For example, breaching the requirements to wear a face covering when COVID-19 is contained in New Zealand carries a different risk to breaching the same requirement at when community transmission is not contained. Appendix Two sets out where this differentiation applies to existing infringement offences.

Framework

14. The following framework is proposed for drafting in regulations:

Infringement offence class	Inclusion criteria	Infringement fee		Maximum court fine	
		Individual	Any other person	Individual	Any other person
Low risk	For infringement offences where a breach is administrative or the worst potential outcome of that breach has a low likelihood of transmission and spread of COVID-19.	\$500	\$1,500	\$1,500	\$4,500
Medium risk	The risk of transmitting or spreading COVID-19 as a result of breaching an infringement offence in this class is not immediate, however the	\$1,000	\$4,000	\$4,000	\$12,000

	worst potential outcome of that breach has a possibility of transmitting or spreading COVID-19 or limiting the <i>capability</i> of the public health response.				
High risk	The risk of transmitting or spreading COVID-19 as a result of breaching an infringement offence in this class is probable, i.e. the risk is not managed.	\$4,000	\$12,000	\$12,000	\$15,000

Rationale for this proposal

Rationale for adopting a graduated approach

15. A graduated infringement framework that sets different levels of infringement offences and assigns proportionate penalties is consistent with Cabinet agreement [SWC-21-MIN-0067 refers]. Enabling proportionate penalties for the severity of behaviour is important to:
- a. maintain a just, fair and equitable infringement regime
 - b. deter non-compliance
 - c. ensure accountability (i.e. that the rules are enforced).

Rationale for delineation between infringement classes and inclusion criteria

16. The delineation between the proposed infringement classes considers public health risk as defined in the Health Act 1956, where there is a substantial risk of serious harm that is potentially borne by someone else. The proposed framework considers harm as either:
- a. the risk of contracting COVID-19, or
 - b. the risk of being subject to stricter requirements due to the risk of transmission or spread not being managed as a result of the breach.
17. Basing the delineation between infringement offence levels in public health risk considerations is consistent with the purpose of the Act. All requirements set out in Orders must also relate back to the purpose of the Act. There are therefore no behaviours identified as infringement offences where consideration of the risk of transmission or spread of COVID-19 is not applicable.
18. In all cases, there are specific scenarios where the risk may be greater in some circumstances than others. As such, the framework adopts a likely worst-case approach to account for possible future behaviours or scenarios.

Rationale for the corresponding penalty fees/fines

19. The penalties for low-risk behaviours are slightly higher than current penalties to increase the deterrent effect, however remain proportionate to what is considered an administrative breach with relatively low risk.
20. The penalty proposed for the medium-risk class is \$1,000. The Ministry of Justice has issued a policy framework for new infringement schemes which seeks to ensure that infringement schemes are fair, equitable, consistent and a proportionate means of encouraging compliance with the law.¹ This guidance states that generally offences which are subject to an infringement notice should not normally exceed a fee of \$1000 unless being used to deter offending where significant economic benefit can result from the offending. As medium-risk behaviours are classified as resulting in an indirect risk of transmission or spread of COVID-19 or impacting the capability of the public health response, this amount is considered suitable.
21. On this basis, the heightened risk presented by breaches classified in the high-risk class warrants the maximum penalties. It is important the maximum fees are only used for the highest-risk breaches, as enforcement agencies have indicated that there is the potential that fees significantly higher than those generally used for infringement offences may result in:
 - a. fewer actual infringements issued, as enforcement officers do not want to impose such significant imposts on people
 - b. fewer payments made at the place or point of issue, as people may not be able to afford the higher penalties, making collecting the payments more difficult
 - c. more disputes and contention at the point of issue, and higher challenge/disputes post-issue (given the new higher values will be more worthwhile to challenge).
22. For repeated serious behaviours or intentional offending, section 26 of the Act enables criminal offence proceedings through the court system.

Agency consultation

23. Agency consultation generated support for the three-tiered approach to setting infringement offence classes and penalties. Key comments identified that the proposed approach:
 - a. is flexible
 - b. can correspond to the risk of the spread and transmission of COVID-19 more readily
 - c. enables the infringements to be commensurate to the offence to better manage proportionality
 - d. better manages public confidence in the system and enforcement by not imposing high penalties for medium-risk breaches.
24. Agencies also identified that using the maximum penalties may result in the risks outlined in paragraph 21.

¹ <https://www.justice.govt.nz/assets/Documents/Publications/infringement-governance-guidelines.pdf>

Other options considered and not recommended

25. The working group considered several alternative ways to differentiate classes of infringement, including:
 - a. whether a fee/fine is a deterrent and whether there are other, additional, incentives for compliance
 - b. whether the breach is the first or subsequent offence
 - c. the frequency of infringement notices being issued for specific infringement offences
 - d. the maximum fines set in the Act (and proposed to increase in the Bill) for every infringement offence without having graduated levels.
26. These alternative approaches are not recommended, as analysis for each has determined they either do not align with the way infringement mechanisms are typically intended for use, have significant information gaps making their application limited in practice, have the potential to perpetuate inequity, or do not align with earlier Cabinet decisions relating to the infringement regime.

Equity

27. Generally, infringement offence fees and fines are a reasonably blunt enforcement mechanism, whereby discretion is enabled through the enforcement approach rather than in the penalty system itself. It is imperative that an education-first approach continues, and that enforcement takes into account where a person is unable to avoid breaching a requirement for a legitimate reason.
28. Communication has been identified as a key tool to support equitable implementation, including clear information about requirements and how to comply, translated into different languages.
29. A summary of the equity and Te Tiriti o Waitangi analysis undertaken for this proposal is set out in Appendix One.

Key actions for implementation

Amend COVID-19 Orders

30. Concurrent to commencement of the regulations, each current Order will require amending to specify the applicable infringement class and corresponding penalty for each listed infringement offence in that Order. The proposed application of the classes to existing infringement offences contained in Orders are set out in Appendix Two.
31. The policy intention is that, as the risk of community transmission increases, so too does the severity of the consequences of a breach. Accordingly, as risk of community transmission increases, the penalties associated with specific breaches will increase. This is set out in the table at Appendix Two.
32. Amendments to the following Orders will be required to implement the proposed infringement regime, as these Orders contain infringement offences:
 - a. COVID-19 Public Health Response (Alert Level Requirements) Order
 - b. COVID-19 Public Health Response (Air Border) Order

- c. COVID-19 Public Health Response (Maritime Border) Order
 - d. COVID-19 Public Health Response (Required Testing) Order
 - e. COVID-19 Public Health Response (COVID-19 Testing) Order
 - f. COVID-19 Public Health Response (Vaccinations) Order.
33. Without specifying infringement offence classes and penalties in respective Orders, the proposed classes of infringement offence and therefore graduated penalties reflecting the public health risk of certain breaches, would not take effect practically. The maximum penalties would apply by default, which are considered disproportionate for many of the infringement offences contained in Orders, as outlined in paragraph 20. As such, new infringement offences will also require a class to be assigned based on the framework intended to be set in regulations.
34. Current drafting of infringement offences in Orders often captures a range of behaviours where the public health risk of a breach differs for those listed behaviours. For example, the requirement to display a QR code, and the requirement that this is in a prominent place. It is anticipated that in the process to amend Orders to reflect the new penalties for infringement offences, further refinement to separate infringement offences where multiple behaviours that represent more than one risk level are captured in one infringement offence may be necessary to achieve better proportionality when applying the framework.
35. Your agreement to authorise drafting instructions to Parliamentary Council Office to this effect will result in some changes to the proposed classes for certain infringement offences in Appendix Two.
36. Note that further infringement offences are anticipated as the development of rules for the effective operation of MIQFs progresses [HR 20211709 refers]. The rules will use the framework in Proposal One, subject to your agreement, to assign penalties for the rules that are also infringement offences.

Waiver of 28-day rule

37. The Ministry are likely to need seek a waiver of the 28-day rule at Cabinet Legislation Committee to achieve the expected time frame of these revised penalties taking effect in November. Agencies did not raise significant operational implications for waiving the 28-day rule, however noted that advance notice of the commencement of the regulations would be essential for enforcement agencies and the public. Officials will prepare the rationale for seeking this waiver through Cabinet Legislation Committee.

Maintain education-first approach in enforcement

38. The current approach to compliance with Orders and requirements within them is to educate and support individuals to meet the requirements before issuing an infringement notice. For example, Police apply an 'engage, encourage, educate, enforce' approach to support people to comply with requirements. It is recommended that this approach be maintained.

Communicate requirements, penalties and how to get support

39. Guidance in a variety of languages using key channels such as the Unite Against COVID-19 website and social media, will be essential to:
- support the public in understanding what is required, why it's important and how to get help to meet the requirements (e.g. financial support schemes to stay home from work)
 - support employers in understanding what they are required to do and what they must support their staff to do.

Proposal Two: Applying the infringement offence and penalties framework to set penalties for infringement offences contained in the Bill

Purpose of proposal

40. The proposal applies the framework in Proposal One to prescribe the infringement offence class and corresponding penalty for the infringement offences contained in the Bill at sections 32P(1) and 32T (1) and (2).

Proposed infringement offence classes and penalties

41. The following infringement offences classes and penalties are proposed to be drafted in regulations for the listed infringement offences:

Source	Description of infringement offence	Class	Infringement fee		Court imposed fine	
			Individual	Any other person	Individual	Any other person
New section 32P(1)	A person required under a COVID-19 Order to reside for any period in a MIQF or other place of isolation and quarantine must remain in their room except for listed permitted activities.	High risk	\$4,000	Not applicable	\$12,000	Not applicable
New section 32T(1)	A person who is required to pay MIQF costs under section 32E must provide the responsible agency with contact information for the purpose of invoicing, including their full name, phone number, email address and contact address.	Low risk	\$500	\$1,500	\$1,500	\$4,500

New section 32T(2)	If the person's contact details change before they pay their prescribed charges, they must update those details as soon as practicable.	Low risk	\$500	\$1,500	\$1,500	\$4,500
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Rationale

42. Regulations are proposed to set the infringement class and corresponding penalty for the infringement offences in sections 32P(1) and 32T(1) and (2) of the Bill, as without doing so the penalty would default to the maximum. The maximum penalty is considered disproportionate for two of the infringement offences contained in the Bill.
43. The proposed classes and penalties for each of the infringement offences in the Bill have been applied using the criteria proposed for each class:

Infringement offence class	Inclusion criteria (from Proposal One)	How this applies to the relevant infringement offence
Low risk	For infringement offences where a breach is administrative or the worst potential outcome of that breach has a low likelihood of transmission and spread of COVID-19.	The infringement offences in section 32T(1) and (2) relating to contact details to charge for MIQF costs do not pose a risk of transmission or spread if breached. Rather, the impact of this breach is administrative.
High risk	The risk of transmitting or spreading COVID-19 as a result of breaching an infringement offence in this class is probable, i.e. the risk is not managed.	The infringement offence in section 32P(1) regarding the requirement for people in MIQ or isolation facilities to stay in their room except for permitted activities is considered high risk as the wording for this infringement offence is inclusive of leaving a MIQF room and facility. To be required to isolate or quarantine means that the person has been exposed to a degree of unacceptable risk and must therefore contain that risk until it has passed. Therefore, breaching the requirement to remain in their room would directly expose others to unmanaged risk in that the MIQF processes to manage risk within the facility would have been breached. This is consistent with the assignment of classes for other border-related infringement offences in Appendix Two.

Next steps

44. Subject to your agreement, Ministry of Health Officials will instruct Parliamentary Council Office to draft the regulations contained in Proposals One and Two, and commence work on the necessary amendments to Orders to support implementation.
45. Note officials anticipate a further briefing as the Bill progresses through the Select Committee process to seek your further agreement to any necessary changes resulting from amendments to elements of the Bill related to infringement offences.
46. Officials will consider whether there is sufficient rationale to support waiving the 28-day rule and include this for Cabinet Legislation Committee, anticipated in late November subject to the passage of the Bill.

ENDS.

PROACTIVELY RELEASED

Appendix One: Equity and Te Tiriti o Waitangi analysis

Further analysis of the proposed framework in Proposal One against the principles of Te Tiriti o Waitangi and equity is set out in the table below.

Principle	How does this approach meet the principles?
Appropriately penalises breaches of Orders	The classes are based on the definition of 'public health risk' in the Health Act 1956 and distinguish the severity of behaviours based on the risk of harm these behaviours create for others. Harm is considered as the possibility of contracting COVID-19 or being subject to stricter requirements due to the risk not being managed. Penalties are adjusted for the different levels to reflect risk.
Provides a deterrent effect	A fine in itself is considered a deterrent for some behaviours. The fine increases to reflect risk and create a greater deterrent for behaviours that, if breached, would result in a greater impact on other people.
Upholds Te Tiriti o Waitangi and advances Māori health outcomes through the principles of tino rangatiratanga, equity, active protection, options, partnership.	<p>As the design scope for this framework is relatively narrow, constrained by the parameters of an infringement offence mechanism and the types of behaviours already characterised as infringement offences in Orders, it is the implementation stage of this proposal that presents distinct opportunities to uphold Te Tiriti principles. In particular:</p> <p>Active protection: guiding the discretionary approach applied by enforcement officers, i.e. communicating with enforcement agencies about ensuring welfare checks, so that where a breach occurs, it is seen as an opportunity to consider the welfare of the individuals committing the breach including employment, housing and financial situations, with referrals to support where appropriate.</p> <p>Options: targeted engagement (guided by infringements data) with Māori providers to check if they require further support (e.g. communications) around the public health requirements, why they are important and how people can get support to comply.</p> <p>Equity: guidance to support enforcement officers to adopt welfare checks in their implementation of this infringement regime and continuation of an education first approach; communication to the public about what is required, why it's important and how to get help to meet the requirements (e.g. financial support schemes to stay home from work); clear communication to employers about the increased fees/fines where they don't meet their requirements, and clarity about what they must support their staff to do.</p>

	<p>Partnership: while there are no explicit partnership intentions in implementation of the proposed fees/fines, there is the intention to engage with Māori to ensure communications are suitable e.g. answers the questions most important to Māori, and to continue work in partnership to respond to outbreaks in local areas, building on the model used in managing the outbreak in Upper Hauraki, for example.</p>
<p>Acknowledges the Ministry of Health definition of equity, that <i>'In Aotearoa New Zealand, people have differences in health that are not only avoidable but unfair and unjust. Equity recognises different people with different levels of advantage require different approaches and resources to get equitable health outcomes.'</i></p>	<p><i>'Many of the frontline staff at border are likely to be Māori and Pacific peoples who have higher representation in the care and support services and labourer sectors compared to non-Māori and non-Pasifika.'</i>²</p> <p><i>The Auckland August 2020 resurgence illustrated the increased exposure risk faced by Māori and Pacific populations, which comprised 82.1% of 179 cases identified in this cluster. Māori, Pacific peoples and migrant populations are also more likely to live in poor-quality housing³, with multiple generations living under the same roof⁴, and experience inequities of outcomes with respect to long-term health conditions⁵. These factors further compound risks associated with COVID-19.'</i></p>
<p>Prioritises consideration of fairness, respect and justice to address and mitigate unfair and avoidable or remediable differences in health among population groups defined socially, economically, demographically or geographically.</p>	<p>We know that Māori and Pacific peoples could be subject to more stringent restrictions and requirements due to the labour, housing and geographic inequities above.</p> <p>Discretion applied by enforcement officers to support compliance among Māori and Pacific communities in particular will be critical to mitigating the exacerbation of inequities through this infringement regime.</p>

² Statistics New Zealand 2018 Census Data – Labour Market by Ethnicity

³ More than 2 in 5 Māori and Pasifika people live in a damp house. Statistics New Zealand. 19 May 2020.

⁴ Crowded housing highest among Pasifika peoples. Statistics New Zealand. 18 May 2018.

⁵ Health and Independence Report. Ministry of Health. 2017.

Appendix Two: Detail to support implementation of the framework in Proposal One

Order type	Infringement offence description	Infringement offence example <i>[note: these may be tailored to specific orders]</i>	Who the obligation applies to	Infringement offence class			
				The disease is contained	Low risk of community transmission	Medium risk of community transmission	Sustained or intensive community transmission
Alert levels	Display of QR code	A person in control of a workplace or public transport service must ensure that a copy of a QR code for the workplace is displayed in a prominent place at or near the main entrance of the workplace.	Individual (in control of a workplace)	Low risk	Low risk	Med risk	Med risk
	Other record keeping systems	A person in control of a workplace must have other record-keeping systems and processes in place to enable a contact record to be kept of: <ul style="list-style-type: none"> a) in the case of a specified workplace, all workers of that workplace entering the workplace; b) in the case of any other workplace, all persons aged 12 years or older entering that workplace. 	Individual (in control of a workplace)	Low risk	Low risk	Med risk	Med risk
	Stay at home requirements	All persons in the [alert level 3 or 4 area] must: <ul style="list-style-type: none"> a) remain at their current home or place of residence, except for personal movement permitted <i>[under the relevant order]</i>; and b) if their home or place of residence is mobile, keep that home or place of residence in the same general location except to the extent that they would be permitted (if it were not mobile) under <i>[the relevant order]</i> to leave 	Individual	N/A	N/A	High risk	High risk

		the home or place of residence as essential personal movement.					
	2-metre physical distancing rule	Where applicable in an Order, any requirement for persons to comply with the 2-metre physical distancing rule so far as is reasonably practicable.	Individual	N/A	Med risk	Med risk	High risk
	1-metre physical distancing rule	The following people must comply with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) so far as is reasonably practicable: a) all workers of a business or service while they are in the workplace of, or working for, the business or service; b) all other persons who enter the workplace, or use the services, of a business or service if [relevant schedule] indicates that the 1-metre physical distancing rule applies to a business or service of that kind.	Individual	N/A	Med risk	Med risk	High risk
	Face covering requirements	Face covering requirements, where applicable, for: <ul style="list-style-type: none"> • visiting certain premises such as supermarkets • on public transport • air transport • visiting health services • attending funerals • making deliveries • undertaking business at a persons home in the workplace • at food and drink businesses. 	Individual	Low risk	Med risk	High risk	High risk

	Must close premises in alert level 3 and 4	A person in control of premises in [<i>an alert level 3 or 4 area</i>] must close those premises unless— a) the person is carrying on an [<i>alert level 3 or 4</i>] business or service; and b) the business or service is operating in compliance with the alert level requirements.	Individual in control of premises	N/A	N/A	High risk	High risk
	Gatherings	A person must not organise a gathering in any outdoor place in the [<i>alert level 3 or 4 area</i>].	Individual	N/A	N/A	High risk	High risk
	Distancing at food and drink businesses at alert level 2	All customers or clients at the [food and drinks] business or service must: a) be seated at a table, [with exceptions]; and b) be seated at a table together in a number that does not exceed the maximum number limit (if any) for social gatherings; and c) comply so far as is reasonably practicable with the 1-metre physical distancing rule (rather than the 2-metre physical distancing rule) when they are not seated at a table.	Individual	N/A	Med risk	N/A	N/A
	Social gatherings	The people responsible for a social gathering must ensure that the social gathering does not exceed the number limit.	Individual/s responsible for gathering	N/A	Med risk	High risk	N/A
Order type	Infringement offence description	Infringement offence example [<i>note: these may be tailored to specific orders</i>]	Who the obligation applies to	The disease is contained	Low risk of community transmission	Medium risk of community transmission	Sustained or intensive community transmission
Air Border order	Managed allocations for MIQ	[Obligations on persons arriving in New Zealand by air] The person must:	Individual	Med risk	Med risk	Med risk	Med risk

		<ul style="list-style-type: none"> a) have a confirmed allocation; and b) produce evidence of a confirmed allocation when requested by 1 or more of the following: <ul style="list-style-type: none"> i. a health protection officer or a medical officer of health; ii. a staff member or representative of the relevant air carrier; iii. an immigration officer. 					
Pre-departure testing	<p>[Obligations on persons arriving in New Zealand by air]</p> <p>The person:</p> <ul style="list-style-type: none"> a) must have— <ul style="list-style-type: none"> i. a negative result from a COVID-19 test administered no more than 72 hours before their journey to New Zealand began; or ii. a certificate that verifies that the person was examined by a medical practitioner no more than 72 hours before the journey began and that the person— <ul style="list-style-type: none"> A. was determined to have particular physical or other needs that made it inappropriate for the person to undergo a COVID-19 test; and B. did not exhibit symptoms of COVID-19; or iii. in the case of a positive result from a COVID-19 test administered no more than 72 hours before the journey began, a certificate that verifies that a medical practitioner considers that 	Individual	Med risk	Med risk	Med risk	Med risk	

		the person is no longer infectious with COVID-19; and					
Evidence of pre-departure test	[Obligations on persons arriving in New Zealand by air] The person: b) must produce evidence of the negative result or the relevant certificate when requested by 1 or more of the following: i. a health protection officer: ii. a staff member or representative of the relevant air carrier: iii. an immigration officer: iv. an enforcement officer	Individual	Low risk	Low risk	Low risk	Low risk	
QFT	[Obligations on persons on QFT flights] A person must not arrive in New Zealand on an aircraft undertaking a QFT flight unless they are a QFT person.	Individual	High risk	High risk	High risk	High risk	
Face covering on QFT flight	[Obligations on persons on QFT flights] A person who is on an aircraft undertaking a QFT flight must, while they are on the aircraft in New Zealand, wear a face covering.	Individual	Low risk	Med risk	High risk	High risk	
Face covering at airport	[Obligations on persons on QFT flights] A person who arrives in New Zealand on an aircraft undertaking a QFT flight and is exempt from clause 8(4) must wear a face covering while they are on the airside of the airport at which they arrive in New Zealand.	Individual	Low risk	Med risk	High risk	High risk	
QFT evidence	[Obligations on persons on QFT flights]	Individual	Low risk	Low risk	Low risk	Low risk	

		<p>A person who arrives in New Zealand on an aircraft undertaking a QFT flight must</p> <ul style="list-style-type: none"> a) provide to a relevant official when requested <ul style="list-style-type: none"> i. appropriate evidence to establish that, on boarding the aircraft, they met each of the applicable QFT prerequisites; and ii. evidence to establish that, on boarding the aircraft, they met all other applicable conditions to an exemption from the requirement to comply with clause 8(3) that is granted under clause 26; and b) answer any questions put to them by a relevant official to establish whether they are a QFT person. 					
Maritime Border order	Disembarking ship for essential tasks	<p>A person who disembarks a ship in accordance with subclause (1)—</p> <ul style="list-style-type: none"> a) must take reasonable steps to minimise the risk of spreading COVID-19, including by— <ul style="list-style-type: none"> i. remaining as close as is reasonably practicable to the ship; and ii. maintaining physical distancing (to the greatest extent practicable) from any person who did not arrive in New Zealand on the same ship; and iii. wearing 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; and iv. following the directions of an enforcement officer; and b) may do so only to undertake an essential task and may not undertake any other tasks or activities while disembarked. 	Individual	High risk	High risk	High risk	High risk

Boarding ship for necessary tasks	[For ships in isolation or quarantine] No person may board the ship, except a person who undertakes a necessary task.	Individual	High risk	High risk	High risk	High risk
Keeping ships in quarantine distanced	[For ships in isolation or quarantine] An enforcement officer may require the ship to remain at least a specified distance away from any other ship, except a ship— a) in the service of 1 or more of the following agencies: i. the Ministry of Health: ii. the Ministry for Primary Industries: iii. the New Zealand Customs Service: iv. the New Zealand Police: b) carrying a person who undertakes a necessary task: c) needed for the safe navigation, movement, or operation of the ship referred to in subclause (1).	Person in charge of ship	Med risk	Med risk	Med risk	Med risk
Quarantine signage	[For ships in isolation or quarantine] The relevant port company must ensure that prescribed isolation and quarantine signage is visible and secure— a) immediately adjacent to every point of egress between the ship and shore; and b) in a manner that can be seen easily by anyone intending to use any of those points of egress.	Relevant port company	Med risk	Med risk	Med risk	Med risk
Transfer from ship to MIQ (or vice versa)	[Requirements relating to crew members who travel to or from security designated aerodrome, ship, or place of isolation or quarantine]	Individual	High risk	High risk	High risk	High risk

		<p>A crew member of a ship who, under this order, is required to travel from a ship, a security designated aerodrome, or a place of isolation or quarantine to a security designated aerodrome, a departing ship or another ship, or a place of isolation or quarantine must do—</p> <p>a) in accordance with directions of the chief executive of the Ministry of Business, Innovation, and Employment, given on advice from a medical officer of health or a health protection officer; and</p> <p>b) as quickly and directly as is reasonably practicable.</p>					
Order type	Infringement offence description	Infringement offence example [note: these may be tailored to specific orders]	Who the obligation applies to	The disease is contained	Low risk of community transmission	Medium risk of community transmission	Sustained or intensive community transmission
Required testing order	Border worker testing	<p>An affected person must report for, and undergo, testing and medical examination for COVID-19—</p> <p>a. at a testing centre specified in the table for the group to which the affected person belongs; and</p> <p>b. at least once within each testing period specified in the fourth column of the item of the table for the group to which the affected person belongs.</p> <p>1) If an affected person belongs to 2 or more groups and is subject to 2 or more testing periods, the period that requires the most frequent testing and medical examination applies to the affected person.</p>	Individual	High risk	High risk	High risk	High risk

	<p>2) Where an affected person must undergo recurring testing, the interval of days from one test to the next test may not exceed the length of the testing period that applies to the affected person.</p> <p>[An affected person in relation to a place, means a person who belongs to a group and who carries out work in any capacity at the place.</p> <p>A group means a group of persons specified in the second column of an item of the table (largely border workers including MIQF)].</p>					
Facilitating border worker testing	<p>For the purposes of facilitating compliance with this order, a relevant PCBU—</p> <p>a) must notify each affected person employed or engaged by the relevant PCBU of—</p> <p>i. the requirement to undergo testing and medical examination under [<i>relevant clause</i>]; and</p> <p>ii. the testing period that applies to the affected person; and</p> <p>b) must not prevent the affected person from reporting for, and undergoing, testing and medical examination during their working hours, if testing and medical examination are available during those hours.</p>	Relevant PCBU	High risk	High risk	High risk	High risk
Record keeping	<p>A relevant PCBU must, for each affected person employed or engaged by the relevant PCBU, keep and maintain a record of the following information:</p> <p>a. the affected person’s full legal name and date of birth:</p>	Relevant PCBU	Med risk	Med risk	Med risk	Med risk

		<ul style="list-style-type: none"> b. a telephone number and an email address by which the affected person may be reached: c. the testing period that applies to the affected person: d. the dates on which the affected person has undergone testing and medical examination in accordance with the testing period that applies to the affected person: e. if the affected person is exempt from testing and medical examination under [relevant clause], the testing period to which the exemption relates f. the testing option that the affected person has chosen. <ol style="list-style-type: none"> 1) The record must be entered on a register kept, maintained, and monitored by, or on behalf of, the Ministry of Health under [relevant clause]. 2) For the purpose of this clause, the affected person must— <ul style="list-style-type: none"> a. provide the relevant PCBU with (or give the relevant PCBU access to) the information specified in subclause (1)(a) to (e) as soon as practicable; and b. ensure that the information is updated as soon as practicable after it changes c. if an exemption under clause 8 applies to the affected person, provide written confirmation of the exemption to the Ministry of Health on request. 					
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	Saliva testing	<p>1) Despite anything in Part 1, an affected person may choose to undergo recurring saliva testing for COVID-19 as an alternative to undergoing testing and medical examination under <i>[relevant clause]</i>.</p> <p>2) If an affected person chooses to undergo recurring saliva testing for COVID-19,—</p> <ul style="list-style-type: none"> a. the affected person must, at least twice within a period of 7 days,— <ul style="list-style-type: none"> i. (produce a sample of their saliva; and ii. (ii) submit the sample to a designated testing place: b. the interval between the production and submission of one saliva sample and the production and submission of the next saliva sample must be at least 2 days. <p>3) In this clause, designated testing place means a place for testing saliva for COVID-19 that the Director-General has approved in a notice published—</p> <ul style="list-style-type: none"> a. on a publicly accessible Internet site maintained by or on behalf of the New Zealand Government; and b. in the Gazette. 	Individual	High risk	High risk	High risk	High risk
	Notification of PCBU	<p>1) An affected person who chooses to undergo recurring saliva testing for COVID-19 under <i>[relevant clause]</i> must, as part of their duties under <i>[relevant clause]</i>, notify their relevant PCBU that they have chosen to comply with the requirements in <i>[relevant clause]</i> instead of the requirements in <i>[relevant clause]</i>.</p>	Individual	Low risk	Low risk	Low risk	Low risk

		<p>2) An affected person may choose to discontinue undergoing recurring saliva testing for COVID-19 if they have produced and submitted at least 2 consecutive saliva samples to a designated testing place in accordance with [relevant clause].</p> <p>3) If an affected person chooses to discontinue undergoing recurring saliva testing for COVID-19, the affected person must—</p> <ol style="list-style-type: none"> a. comply with the requirements in clause 7; and b. notify their relevant PCBU as soon as practicable that they have chosen to comply with the requirements specified in [relevant clause] instead of the requirements specified in [relevant clause]. 					
Order type	Infringement offence description	Infringement offence example [note: these may be tailored to specific orders]	Who the obligation applies to	The disease is contained	Low risk of community transmission	Medium risk of community transmission	Sustained or intensive community transmission
Vaccination order	Requirement for border workers to be vaccinated	<p>An affected person must not carry out certain work unless they are vaccinated.</p> <p>[Affected person means a person who belongs to a group (or whose work would cause them to belong to a group)].</p> <p>[Group means a group of affected persons specified in the second column of an item of the table set out in Schedule 2 – primarily border workers].</p>	Individual	High risk	High risk	High risk	High risk
	Requirement for PCBU to only	1) A relevant PCBU must not allow an affected person to carry out certain work unless	PCBU	High risk	High risk	High risk	High risk

	allow vaccinated border workers to work	<p>satisfied that the affected person is vaccinated.</p> <p>2) A relevant PCBU—</p> <ul style="list-style-type: none"> a. must notify each affected person of their duty to be vaccinated; and b. must not prevent the affected person from reporting for, and undergoing, vaccination during their working hours, if vaccinations are available during those hours. 					
	Register of vaccination records	<p>[For PCBUs regarding vaccination records]</p> <p>1) The relevant PCBU—</p> <ul style="list-style-type: none"> a. must, before a person the relevant PCBU employs or engages actually carries out certain work, update the register to provide the Ministry of Health with confirmation that the person is an affected person; and b. must— <ul style="list-style-type: none"> i. (ask the Ministry of Health to confirm whether an affected person the relevant PCBU employs or has engaged to carry out certain work is vaccinated; or ii. access the register to confirm whether the person is vaccinated. <p>2) The relevant PCBU must notify the affected person that—</p> <ul style="list-style-type: none"> a. the affected person has a duty to be vaccinated; and b. the relevant PCBU has checked the affected person's vaccination record under subclause (1). <p>3) The relevant PCBU must, as soon as practicable, notify the Ministry of Health—</p>	PCBU	Med risk	Med risk	Med risk	Med risk

		<ul style="list-style-type: none"> a. of any change reported to the relevant PCBU under [<i>relevant clause</i>]: b. that a person that the relevant PCBU has engaged or employed has ceased to be an affected person for the relevant PCBU. <p>4) The relevant PCBU must ensure that the register has, in respect of an affected person the relevant PCBU employs or has engaged to carry out certain work, the following information:</p> <ul style="list-style-type: none"> a. the affected person’s full legal name and date of birth: b. a telephone number by which the affected person may be reached. <p>5) The affected person must—</p> <ul style="list-style-type: none"> a. provide the relevant PCBU with (or give the relevant PCBU access to) the information specified in subclause (4) as soon as practicable; and b. ensure that the information is updated as soon as practicable after it changes. 					
PCBU access of vaccination records	<p>[For affected persons regarding vaccination records]</p> <p>An affected person who carries out certain work for a relevant PCBU—</p> <ul style="list-style-type: none"> a) must allow the relevant PCBU to access any COVID-19 vaccination record that the Ministry of Health may have for the affected person: b) must, as soon as practicable, notify the relevant PCBU whether the affected person 	Individual	Low risk	Low risk	Low risk	Low risk	

		<p>has been vaccinated, including (but not limited to)—</p> <ul style="list-style-type: none"> i. the dates on which they have received any injections of the Pfizer/BioNTech COVID-19 vaccine: ii. any exemption under <i>[relevant clause]</i> that applies to the affected person: c) must, if an exemption under <i>[relevant clause]</i> applies to the affected person, provide written confirmation of the exemption to— <ul style="list-style-type: none"> i. the relevant PCBU: ii. an enforcement officer on request. 					
	Records availability for enforcement purposes	<p>[Regarding vaccination register]</p> <p>A relevant PCBU must make the records it makes under this order available as soon as practicable to an enforcement officer who requests access to the record for the purposes of investigation and enforcement.</p>	PCBU	Low risk	Low risk	Low risk	Low risk

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