

Briefing

COVID-19 Public Health Response (Infringement Offences) Regulations 2021 for Ministerial consultation

Date due to MO:	5 November 2021	Action required by:	12 November 2021
Security level:	IN CONFIDENCE	Health Report number:	20212405
To:	Hon Chris Hipkins, Minister for COVID-19 Response		

Contact for telephone discussion

Name	Position	Telephone
Annie Hindle	Manager, COVID-19 Policy	s 9(2)(a)
Caroline Flora	Associate Deputy Director-General, System Strategy and Policy	s 9(2)(a)

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 Withdrawn | |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:

COVID-19 Public Health Response (Infringement Offences) Regulations 2021 for Ministerial consultation

Security level: IN CONFIDENCE **Date:** 5 November 2021

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

Purpose of report

1. This briefing recommends that you consult your Ministerial colleagues on the attached draft COVID-19 Public Health Response (Infringement Offences) Regulations 2021 (the draft regulations) and paper for Cabinet Legislation Committee (the LEG paper), proposed for consideration on 25 November 2021.
2. This briefing also seeks your further policy approval for the consequential amendments required to COVID-19 orders to implement the regulations.

Background

3. The COVID-19 Public Health Response Amendment Bill (No 2) 2021 (the Bill) increases the maximum infringement fees and fines for breaching public health requirements and includes powers to make regulations to establish penalties for specific infringement offences or classes of infringement offences within the new maximums.
4. Cabinet Business Committee authorised you to make policy decisions for the drafting of these regulations [CBC-21-MIN-0102 refers].
5. On 15 October 2021, you agreed to set the following framework in regulations [HR20212156 refers]:

Infringement offence class	Description	Prescribed infringement fee		Maximum court-imposed 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	\$1,000	\$4,000	\$4,000	\$12,000

	infringement offence in this class is not immediate, however the worst potential outcome of that breach has a possibility of transmitting or spreading COVID-19 or limiting the capability 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

6. You also agreed to assign the following classes and the corresponding penalties for those classes to infringement offences contained in the Bill [HR20212156 and HR20212329 refer]:
- a. Section 32P(1) (the requirement to remain in the assigned place of isolation or quarantine): High risk.
 - b. Section 32T(1) (the requirement to provide contact information): Low risk.
 - c. Section 32T(2) (the requirement to update contact details that change): Low risk.

An additional infringement offence has been proposed

7. An additional infringement offence has been proposed during the course of the Select Committee process at section 32P(2), regarding the requirement for a person leaving a Managed Isolation and Quarantine Facility (MIQF) or other place of isolation or quarantine, to comply with directions or conditions imposed by the chief executive. Officials support this additional offence.
8. Ministry of Health officials consider that assigning a 'high risk' infringement offence class for section 32P(2) comes under your existing policy decision relating to section 32P(1), as this relates to requirements imposed on any person permitted to leave an MIQF in the circumstances detailed in section 32P(1), such as for medical attention. Both provisions therefore relate to restriction of movement within MIQFs or other places of isolation and quarantine.
9. The draft regulations assign section 32P(2) as a high risk infringement offence class.

Consultation

10. The draft regulations and LEG paper are attached (**Appendices One and Two**) for consultation with your Ministerial colleagues.
11. It is recommended that you consult with your relevant Ministerial colleagues on the attached draft Regulations and LEG paper between 5 and 12 November 2021.

Timing and 28-day rule

12. The regulations will be brought into force by Order in Council to ensure that the maximum penalties are not imposed for every infringement offence by default.

13. The Regulations are proposed to be considered by Cabinet Legislation Committee as soon as possible following commencement of the Bill. As such, Cabinet Legislation Committee consideration is proposed for 25 November 2021, with confirmation by Cabinet and referral to Executive Council on 29 November 2021.
14. The LEG paper seeks a waiver of the 28-day rule on the basis that the increased fees and fines are necessary to deter increasing breaches of COVID-19 orders ahead of the holiday season and the transition to the COVID-19 Protection Framework throughout New Zealand.
15. Subject to a waiver of the 28-day rule, it is anticipated that the regulations will be notified in *the New Zealand Gazette* on or around 2 December 2021 and come into force on or around 4 December once the necessary amendments to orders have been completed and duly notified.
16. Should Cabinet Legislation Committee not agree to waive the 28-day-rule, the regulations will not be able to commence until late December/early January.

Further policy decision to implement regulations

17. In making the policy decisions for the regulations, you also approved the application of the infringement offence classes to existing infringement offences contained in COVID-19 orders and authorised Ministry of Health officials to instruct the Parliamentary Counsel Office (PCO) to draft the necessary amendments to orders to operationalise the new infringement regime.
18. The approach you approved increases the class and therefore penalty as community transmission increases, i.e. at different Alert Levels. Since this decision, the COVID-19 Protection Framework has been announced, which enables more granular, targeted settings for different areas of New Zealand at any one time, and within those areas, for vaccinated and unvaccinated persons.
19. Adjusting the infringement offence class for infringement offences at different levels of transmission within the context of the COVID-19 Protection Framework poses significant complexity for enforcement that may undermine the intent of this infringement regime.
20. Officials recommend adjusting the approach to assign one infringement offence class per infringement offence. This is consistent with the original proposal consulted on with agencies.

Next steps

21. Following consultation with your Ministerial colleagues and provision of feedback to officials by 12 November 2021, you will receive a further briefing on 17 November 2021 that contains the final LEG paper, the finalised regulations, and supporting talking points for lodgement with Cabinet Legislation Committee on 18 November 2021.

Recommendations

We recommend you:

- a) **Note** that the infringement offence introduced at Section 32P(2) (the requirement to comply with direction or conditions imposed by the chief executive) has been assigned a 'high risk' infringement offence class and that this falls within your existing policy decisions [HR20212156 refers]. **Noted**
- b) **Agree** to consult your Ministerial colleagues on the attached draft COVID-19 Public Health Response (Infringement Offences) Regulations 2021 and Cabinet Legislation Committee paper entitled 'COVID-19 Public Health Response (Infringement Offences) Regulations 2021' and provide feedback to officials. **Yes/No**
- c) **Note** that Ministerial consultation will need to be completed and feedback provided to officials by 12 November 2021 to keep pace with the COVID-19 Public Health Response Amendment Bill (No 2) 2021. **Noted**
- d) **Agree** to adjust the application of infringement offence classes to one class per infringement offence in drafting instructions to PCO, rather than adjusting the class at different levels of community transmission. **Yes/No**



Caroline Flora

**Associate Deputy Director-General,
System Strategy and Policy**

Date: 05/11/2021



Hon Chris Hipkins

Minister for COVID-19 Response

Date: 11/11/2021

ENDS.

Appendix One: Draft COVID-19 Public Health Response (Infringement Offences) Regulations 2021

This is publicly available at: www.legislation.govt.nz/regulation/public/2021/0393/latest/LMS600702.html

PROACTIVELY RELEASED

Appendix Two: Draft LEG paper '*COVID-19 Public Health Response (Infringement Offences) Regulations 2021*'

This is publicly available at: www.health.govt.nz/about-ministry/information-releases/release-ministerial-decision-making-documents/cabinet-material-relating-2021-and-covid-19-public-health-response-amendment-act-2021-commencement

PROACTIVELY RELEASED