

CLEARANCE CHECKLIST

Inclusion of this checklist is mandatory. Please complete the whole list and private office will remove before putting submission in the box. A submission without it will be sent back.

Note: Contact names provided must have seen and approved the submission.

Finance:

Does this involve any spending or affect existing budgets?

- If yes, named official:
Click here to enter text.
 No

Legal:

Does this include legal risk, a court case or decisions that can be challenged in court?

- If yes, named official:
NR
 No

Communications:

Could this generate media coverage, or a response from the health sector?

- If yes, named official:
NR
 No

Analysis and data fact-checking:

Does this include complex data, statistics or analysis?

- If yes, named official:
Click here to enter text.
 No

Devolved Administrations:

Will this affect Scotland, Wales or Northern Ireland?

- If yes, named official:
Click here to enter text.
 No

Fraud:

Have you considered fraud risks?

- If yes, named official:
Click here to enter text.
 No

Commercial:

Does this include commercial or contractual implications?

- If yes, named official:
Click here to enter text.
 No

Strategy Unit:

Does this relate to cross-cutting or longer-term implications for wider DH strategy?

- If yes, named official:
Click here to enter text.
 No

Implementation Unit:

Does this relate to one of the Secretary of State priorities?

- If yes, named official:
Click here to enter text.
 No

Legislation:

Does this include options that may require secondary legislation?

- If yes, do you have a prioritisation reference number? (*contact Parly or SOPL if unsure*):
Click here to enter text.

Duties, Tests and Appraisals:

The following tests apply and have been considered.

- Secretary of State Statutory Duties, including on health inequalities
 Public Sector Equality Duty
 Family test
 Other(s) (please specify)
Click here to enter text.

OFFICIAL SENSITIVE

To: Secretary of State

From: NR, Contact
Tracing Policy
Clearance: Ben Dyson, Policy Director
Test and Trace
Dido Harding
Date: 17 September 2020
Copy: Lord Bethell
[Private Office Submissions](#)
[Copy List](#)

IMPROVING COMPLIANCE WITH SELF-ISOLATION: PROPOSED ANNOUNCEMENT

Issue	<p>Cabinet Office is preparing a set of proposals to improve compliance with self isolation, for agreement at COVID(O) tomorrow (Friday 18 September) and possible announcement on Sunday.</p> <p>This note sets out the key elements of the proposals and key issues on which we would welcome SofS's steer. The most urgent of these in our view is securing agreement that the legal duty should come into force no earlier than the new financial support scheme.</p>
Timing	<p>Urgent (two working days)Urgent (two working days)</p> <p>If there is a specific date: 18/09/2020</p> <p>For all timing requests, please provide a reason or explanation: For agreement at COVID (O) on this date</p>
Recommendation	<p>Your agreement is sought on the following recommendations:</p> <p>Financial support</p> <ul style="list-style-type: none">- That we keep financial support eligibility limited to people on specified DWP/HMRC benefits. That we offer a lump sum payment of £500 to those asked to self isolate, both those who test positive and contacts.- That you highlight in the COVID(O) discussion the challenges that some local authorities will face in setting up the scheme. <p>Legal duty to self isolate</p> <ul style="list-style-type: none">- That we implement a legal duty to self isolate if a person is notified of a positive test or that they have been named as a close contact of someone who has tested positive, and that there is a £1000 penalty for non-compliance.]- That we implement both the financial support package and the legal duties at the same time.

OFFICIAL SENSITIVE

	<ul style="list-style-type: none">- That we confine announcements regarding proposed daily phone calls to 'increasing contacts', to provide scope for us to work through the operational requirements implementing the policy with call handlers- Your steer is requested on policy paragraphs 24 and 25, proposed enforcement model. <p>Subject to your steer and the outcome of the COVID(O) discussion, we will provide you with further full advice on next steps for both the financial support scheme and the duty to self isolate, including an analysis of the relevant duties you need to consider.</p>
--	---

**Discussion
Summary**

1. Cabinet Office is preparing a set of proposals for agreement at COVID(O) tomorrow (Friday 18 September). The key elements of the proposals are:
 - Rolling out nationally the financial support scheme for people on low incomes who need to self-isolate – and increasing the value of the payment
 - Making it a legal duty for people who have tested positive and their contacts to self-isolate – and introducing a package of measures across Test and Trace, local authorities and the police to promote compliance and enable enforcement action to be taken against people who do not comply
 - Making it a legal duty for people who have tested positive not to provide false information about their recent contacts
2. Subject to agreement by COVID(O), No.10 would like the PM to announce this on Sunday
3. No.10 has been pressing for the new legal duties to come into effect as soon as possible thereafter. The proposal to COVID(O) is that the legal duties come into effect alongside the financial support package on Monday 5 October, allowing a fortnight to prepare. We agree strongly with this approach. There could be damaging effects on take-up of testing among low-income groups if the two are not aligned. **LPP/LAP**
4. This note sets out the key elements of the proposals and key issues on which we would welcome SofS's steer. The key points for tomorrow's COVID(O) are:
LPP/LAP

OFFICIAL SENSITIVE

- If designed, implemented and communicated well, this has potential to make a significant difference to our ability to stop the spread of the virus. If not handled with care, it has potential for serious unintended consequences, in terms of take-up of testing and sharing of information, particularly for disadvantaged and vulnerable groups.
- This needs to be presented and packaged as a way of heightening people's sense of civic duty in self-isolating to stop the spread of the virus, protect their local communities and help get the country back to a more normal way of life. The new legal duty is designed to reinforce that societal obligation and back it up with support for people who may suffer financial hardship by self-isolating.
- Essential that the legal duty and the financial incentives come into force at the same time.
- While legal penalties need to provide a credible deterrent, the public must also have confidence enforcement powers will be used responsibly and proportionately. While messages to the public need to be clear and consistent, it would not be considered reasonable to issue a fine for someone taking a brief, solitary walk outside their house.
- DHSC, MHCLG and HO are working together to ensure a joined up system across Test and Trace, local authorities and the police that allows fines to be issued for the most egregious breaches, alongside using more regular communications with people in self-isolation to reinforce the importance of self-isolation and make sure people are getting the support they need. But we must not conflate the two in our public messaging, e.g. suggest that phone calls from Test and Trace call handlers are designed to check people are complying and refer them to the police if they are not.
- The financial support scheme needs to be kept as simple as possible – and implementation needs to be carried out in close partnership with local government.

Background

5. Before Test and Trace was launched on 28 May, you agreed that we should not in the first instance make it a legal duty to self-isolate but that we should keep the position under review and re-consider the case for mandation if there was evidence of significant non-compliance.
6. Annex A summarises the arguments set out in the draft COVID(O) paper as to why the government should now introduce a legal duty, taking into account the risk that it could discourage people from getting tested or, if they test positive, from sharing information about their contacts.
7. We are preparing a Public Sector Equality Duty assessment, which you will need to consider before a final decision to introduce a legal duty to self-isolate and the proposed financial support package. Great care will be needed to design and implement the overall package in ways that mitigate the particular risks for communities that are less trustful of

OFFICIAL SENSITIVE

government and may be more likely to forego testing or decline to share information about recent contacts, including BAME communities. On the other hand, any measures that help reduce transmission of the virus will have proportionately greater benefits for people at greater risk of mortality or serious illness from COVID-19 and/or at greater risk of exposure to COVID-19, which will include many of the same groups for whom those risks apply.

Financial support

8. The proposal is for a scheme that mirrors the eligibility criteria currently used in Blackburn with Darwen, Oldham and Pendle, i.e. asked to self-isolate by Test and Trace, employed/self-employed, unable to work from home and will lose income, and currently in receipt of any one of a range of means-tested DWP/HMRC benefits. The previous proposal had been to extend the eligibility criteria to include anyone with an income below £18,000 before tax. This would improve the impact of the scheme but also significantly increase the administrative complexity. An £18,000 earnings limit does not exist in the benefits system and would be difficult to justify in HMT's view. HMT have proposed that local authorities could be given additional funding to enable them to make discretionary payments to people who do not meet the eligibility criteria above but would suffer financial hardship for other reasons.

Are you content for eligibility to be limited to people on specified DWP/HMRC benefits, rather than extending to others on less than £18,000, subject to the ability for local authorities to make discretionary hardship payments in exceptional circumstances?

9. HMT have proposed that there should be a single lump-sum payment of £500 for anyone asked to self-isolate. This would be equivalent to £50 per day for someone who has tested positive (10 days self-isolation) and just under £36 per day for household contacts (14 days self-isolation). Given non-household contacts will typically begin self-isolation on around day 5 or day 6 of the 14-day period, a £500 lump sum is likely to give them on average a higher amount per day of self-isolation, but it would be administratively much more complex to link the payment to an individual's self-isolation period.

Are you content with a lump-sum payment of £500 for anyone asked to self-isolate?

10. The proposal is for local authorities to administer the scheme, using existing powers for local welfare payments, which have the advantage of not affecting eligibility for DWP and HMRC benefits. The biggest challenge here is getting all 343 local authorities ready to process and verify applications and administer payments within the proposed timeframe of 14 days. Based on initial discussions with trusted local authority colleagues, we are concerned that some local authorities will not be able to set up new systems within this timeframe. MHCLG colleagues share this concern. We are working with MHCLG and local authorities to identify ways of simplifying the application and verification

OFFICIAL SENSITIVE

process and will provide a further feasibility assessment tomorrow. Local authorities have emphasised the importance of co-producing the design of the scheme and are committed to doing this over an accelerated timescale, while expressing serious doubts about the ability for this to be 14 days.

11. The current CO/No.10 proposal excludes contacts asked to self-isolate via the app, on the grounds that we cannot be sure the person claiming payment is the same person as the app user. **You are receiving a parallel submission on a proposed solution to enable contacts notified through the app to become eligible, if they wish, for financial support.**
12. CO are proposing that, although MHCLG will distribute funding to local authorities, DHSC should have **Accounting Officer responsibility**. This remains under discussion with CO, MHCLG and HMT. We have yet to secure confirmation that HMT will provide the full **additional funding needed** for the scheme and for the local authority administrative costs involved.
13. Cabinet Office are exploring with HMT the scope to make additional funding available to the **devolved administrations** if they agree to implement the scheme on a UK-wide basis. As the scheme is administered through local authorities, it will require the individual agreement of the DAs to make it a UK-wide scheme.

Legal duty to self-isolate

14. The proposed legal duty would apply to anyone notified of a positive test result and any of their contacts. It would not apply to people who have symptoms and have not been tested.
15. Although ideally the duty to self-isolate for **household contacts** (someone who lives with someone who has tested positive) would apply simply by virtue of the person who's tested positive receiving a positive test result, it is unlikely we can rely on that person informing other members of their household, unless this too were made a legal duty. It is likely the duty will therefore apply only where the person who has tested positive has given the names of their household contacts to Test and Trace, so that they can be formally notified. In principle, there could be a legal duty for people who test positive to provide accurate information about other people living in their households, but this would give rise to difficulties where people could be at risk from providing that information, e.g. in cases of domestic abuse.
16. For **non-household contacts**, the legal duty could only apply to people whose names are notified to Test and Trace by the person who has tested positive. As set out below, we do not think there is a practicable and enforceable way of requiring people to provide accurate information about all their contacts, so will continue to be reliant on people's willingness to do the right thing when asked for this information.

OFFICIAL SENSITIVE

17. Some non-household contacts are advised to self-isolate not by Test and Trace or local public health officials, but by their employer (e.g. a hospital, care home, prison) or by an educational establishment (e.g. a school or university) following a risk assessment by local public health teams or according to protocols agreed with local public health teams (e.g. automatically self-isolating everyone in the same class if one pupil tests positive). It is not yet certain whether the legal duty will be able to capture all these different forms of notification – and it should be noted that we do not have systems to collect information about the names, contact details and isolation start/end dates of people notified in these other ways, so it would be very difficult to enforce the legal duty in these circumstances.
18. **App users** who book a test will provide contact details (independently of the app) when they order their test and would then be caught by the legal duty if they are then notified (again, independently of the app) of a positive test result. The legal duty would not apply to people notified through the app that they are contacts of someone who has tested positive, given we do not know their identity. The parallel submission sets out how the legal duty could apply to people who voluntarily chose to take up the financial support scheme after having been notified by the app that they are a contact.
19. We are working through a wide range of definitional issues for the regs, on which we will provide further advice shortly. We are working on the assumption that the exemptions used in the quarantine regs for international arrivals will broadly apply here, e.g. exclusions for medical emergencies, and that – as with those regs – parents or guardians would be responsible for breaches of self-isolation by someone under the age of 18.
20. It is likely that the duty will need to define self-isolation as meaning staying at home (with some specified exceptions) for the full period of self-isolation. There is a potential argument for providing further exceptions for behaviours that, while they contravene the current public health guidance on self-isolation pose a very low risk of onward transmission, e.g. leaving the house for a short period of outdoor exercise while wearing a face mask and avoiding contact with other people. Initial public health advice suggests that it would be unreasonable to fine someone for a breach that did not pose a serious public health risk (given the purpose of the regs would be to prevent disease transmission), but that it would be difficult to legislate for this in ways that allowed for clear, consistent communications to the public.

Legal duty to provide accurate information

21. We propose that the duty should be designed to prevent people knowingly providing false information, i.e. naming someone with whom they have not had recent contact, for instance to enable them to benefit from financial support or maliciously to put someone at risk of a fine if they do not self-isolate.

OFFICIAL SENSITIVE

Are you content with this approach?

22. Given the judgements involved in working out who is or isn't a close contact, based on proximity of contact, length of contact and time of contact, we do not think it would be practicable or reasonable to have a blanket duty to provide accurate information – this might deter people from volunteering information about which they are unsure. Nor do we think it is practicable or enforceable to make it a legal duty to provide information about all recent contacts that a person can name, as the ability to do so requires reliability of memory.

Penalties

23. The draft COVID(O) paper proposes a fine of £1,000 for failure to meet these duties, in line with the quarantine regs for international arrivals.

Are you content?

Commencement

24. No.10 initially had indicated they would like the duty to come into force as soon as possible after the announcement, but (based on our advice) Cabinet Office now propose a date in early October alongside the financial package. If the duty were to come into force before this, we think it would pose serious risks to the impact of Test and Trace and its ability to help prevent the spread of the virus. If financial support only become available several weeks after it became legal offence not to self-isolate, that would act as a major disincentive for people to get tested if they are concerned about the financial impacts of having to self-isolate – and for people who have tested positive to provide information about contacts who will suffer financially from having to self-isolate. These are inherent risks with a legal duty to self-isolate, but the risks are likely to be significantly greater if we are not able to provide financial support for those most at risk of hardship from not being able to work.

Do you agree that the legal duty to self-isolate should come into force at the same time as the introduction of the financial support scheme?

Role of Test and Trace, local authorities and police

25. Our proposed approach to promoting compliance and supporting appropriate enforcement activity, which we continue to work up with MHCLG and Home Office is based on:
- local authorities and Test and Trace sharing information with the police if there is prima facie evidence of a breach of self-isolation (but this is more likely to be someone telling a call handler or a local authority official that they are ignoring the instructions than, say, a call handler detecting suspicious background noise on a phone call)
 - the police acting on evidence – either from local authorities/Test and trace or from members of the public – and taking action where there is the strongest grounds for supposing that someone is not self-

OFFICIAL SENSITIVE

isolating and the greatest chance of being able to take action, e.g. where there is evidence that someone is going into work rather than staying at home

- more regular communication with people self-isolating (through a combination of local authorities and Test and Trace) to reinforce the importance of self-isolation, but not with the declared purpose of “checking that people are self-isolating”.

Are you content with these principles?

26. We have pushed back on No.10 proposals that Test and Trace call handlers to make daily calls to everyone in self-isolation to make sure they are complying and listening out for suspicious background noises. We propose that call handlers should make periodic calls (but probably no more than around twice during a period of self-isolation), but with a focus on promoting compliance and helping signpost people towards support. Subject to changes to data privacy notices, the Test and Trace service would be able to share information with local authorities or the police if there was a clear indication that someone was not complying. But excessive use of phone calls would, in our view, further produce a level of resentment from the public out of all proportion to the potential benefits in promoting compliance, while having limited impact in providing meaningful evidence of non-compliance. The findings from our recent trial of follow-up calls indicate that even two phone calls during a self-isolation period are considered intrusive.

Do you agree that we should resist any proposal for daily phone calls and that Test and Trace should instead use a combination of phone calls, text messages and greater local authority involvement in contact tracing to reinforce the importance of self-isolation and help identify people who need additional support to self-isolate?

27. The current proposals envisage that the police will investigate any breaches and can then issue Fixed Penalty Notices. We have discounted giving local authorities a role in issuing FPNs, as this could undermine the ability of local authorities to provide support to local communities, particularly to vulnerable people (e.g. if people suspect that the local authority officials delivering their food package or helping them arrange alternative care for a relative may also pass their details onto the police if they think they are not self-isolating).

LPP/LAP

LPP/LAP

28. The draft COVID(O) paper recognises these risks and recommends a focus for enforcement on high risk areas and groups; egregious and high-profile breaches; and where individuals have identified others who have tested positive but are breaching self-isolation.

ANNEX A

ARGUMENTS FOR AND AGAINST MANDATION

The draft COVID(O) paper cites research due to be published shortly in the BMJ suggesting that only around 20% of people with symptoms self-isolate and an even lower proportion of people told to self-isolate by Test and Trace do so. More recent research, as part of the recent pilot study of compliance (based on polling people told to self-isolate rather than a community poll), indicated that 88% of those who responded had not left the house in the previous three days, reducing to 39% if one assumes that people who did not respond to the survey did leave the house. The emerging conclusions from this more recent study are that a relatively high proportion of people may be mostly complying with self-isolation but leaving the house occasionally (e.g. to take exercise) and that a lower proportion are ignoring the self-isolation advice altogether (e.g. continuing to go into work) – but there is still very limited quantitative data on where people sit on the spectrum from brazen non-compliance to complete compliance.

As set out in the draft COVID(O) paper, the principal argument in favour of mandation is that it would drive up compliance among those who need to self-isolate and the principal argument against is that it would discourage people from getting tested or, if they test positive, from sharing information about their contacts. The evidence underlying each of these arguments is limited:

- A Behavioural Insights Team (BIT) survey found a modest benefit to mandation, with a 2 percentage point increase in intention to comply with self-isolation instructions if mandation were in force. However, we know that survey evidence on intention to comply varies largely from actual behaviour.
- All other things being equal, mandating compliance with self-isolation is likely to reduce the number of symptomatic individuals who choose to get tested, particularly in the hardest-to-reach communities (non-English speakers, those who work in the grey economy, etc.), as well as reducing the willingness of those testing positive to share information about their contacts. There is some evidence to support this – a BIT survey found 93% of individuals would still order a free test if there was a fine equalling £1,000, or up to a week's income, for breaching self-isolation if they tested positive, whereas 7% would not.

The draft COVID(O) paper highlights the apparent inconsistency between mandatory quarantine for international arrivals and the lack of mandation for people who have tested positive or their contacts, who are many times more likely to be infectious. Although the behavioural implications are significantly different – the former may discourage people from international travel, the latter may discourage people from getting tested or sharing information about their recent contacts if they test positive – the inconsistency risks sending a signal that self-isolation is optional for positive cases and their close contacts.

The UK is also an international outlier in not having made self-isolation mandatory already – Australia, Italy, France, Germany, as well as all East

OFFICIAL SENSITIVE

Asian comparators, legally oblige individuals to self-isolate, with varying penalties and enforcement regimes.

The proposals going to COVID(O) are designed to send a clear, unambiguous signal as to how important self-isolation is and how seriously they need to take it, while seeking to mitigate the risks set out above by providing financial support for those most likely to suffer financial hardship if they are unable to work while self-isolating. We are working with Cabinet Office to develop a communications and marketing campaign that will further reinforce the importance of self-isolation and promote positive behaviours.