



Irish Council for
Civil Liberties

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By email to Minister for Health Stephen Donnelly;

and Colm Burke TD; Neasa Hourigan TD; David Cullinane TD; Alan Kelly TD; Roisin Shortall TD; Gino Kenny TD

19 January 2021

Dear Minister for Health and health spokespersons,

It is ICCL's understanding that the issue of mandatory quarantine is to be discussed over the coming days. Prior to that discussion, we encourage you to take into account the rights perspective.

Whenever any restrictions on fundamental rights are imposed, human rights law requires that government must show that the restrictions are provided for by law, necessary in a democratic society and proportionate to a legitimate aim.

During the summer of 2020, it was suggested on a number of occasions that blanket quarantine might be imposed on people coming into the country. It was the opinion of ICCL at that time that a blanket legal requirement to self-isolate would be a significant interference with the right to liberty and free movement and would not be a measure proportionate to the risk posed at that time.

[In a letter](#) to the Oireachtas Special Committee on Covid-19, we said

“We are concerned that a blanket imposition of quarantine without connecting such a significant limit on rights to specific contexts such as the reproductive rate of the virus in a particular country, duration of stay in that country or activities undertaken abroad is **too broad a restriction on rights to be proportionate**. Before making such regulations, the Minister must provide evidence that such an approach is in line with expert health advice, is necessary and is a proportionate interference with the right to liberty.”

We recognise that the situation we face as a nation in January 2021 is vastly different to that which we faced during the summer of 2020. Covid-19 is reproducing at an exponential rate within the domestic population and there are new strains of the disease emanating from the UK, South Africa and Brazil.

Given the current situation, we understand that some may consider mandatory quarantine for inbound passengers from specific countries posing a particular risk to public health as a proportionate measure to protect public health and life.

If this is the Government's position, we would emphasise that imposing mandatory quarantine on inbound travellers constitutes a significant interference with their right to liberty and imposes a high duty of care on the State over travellers who it proposes to detain. The right to liberty is protected by the Irish Constitution, the European Convention on Human

Rights and the EU Charter on Fundamental Rights and Freedoms. Rights in these instruments, in the main, apply to all individuals in the State's jurisdiction.

The government should publicly explain why it considers interference with the right to liberty is justified and proportionate at this time. It should ensure that mandatory quarantine is part of an overall strategy to address the issue, including, for example, an all-island strategy and making testing available at ports of entry. It must uphold its duty of care to all those in quarantine, including by ensuring the welfare of all those in its care. Legislation providing for mandatory quarantine must meet strict rule of law criteria and stringent safeguards must be put in place, as outlined in more detail below.

Legislation:

- Any legislation (including any regulation or statutory instrument) providing for mandatory quarantine must be of limited duration with a clear end date (sunset clause);
- Any proposed legislation must be subject to pre legislative scrutiny, given adequate time to be debated in the Oireachtas, and there must be consultation with relevant experts including the Irish Human Rights and Equality Commission. In the case of regulations or statutory instrument, the Minister for Justice must be consulted and the Oireachtas should be consulted before the regulations are signed.
- New laws must be widely publicised and explained so that anyone subject to them has a clear understanding of their content. Any exemptions to the requirement to quarantine must be clear and effectively communicated to the public.
- Costs of quarantine should be borne by the State where people are entering the State for essential reasons, or consideration should be given to providing a hardship fund to support such costs.

Quarantine Centres

As noted above, mandatory quarantine is a form of deprivation of liberty. Great care and caution must be taken in imposing such a deprivation of liberty on any individual.

- Quarantine should be for a medically determined period of time and no more (eg 14 days);
- A risk assessment including a mental health assessment should be carried out on all individuals who will be in State care.
- Centres for quarantine must be staffed with fully trained individuals who understand their duty of care to those in quarantine.
- High standards of care in terms of living conditions, meals and care must be provided for.
- Quarantine centres must be subject to human rights compliant inspections in line with international human rights law.
- Those quarantined must have access to medical treatment and legal advice.
- An adequate complaints mechanism should be in place.
- Anyone who disputes that they should be in quarantine must have a right to appeal their detention by the State.



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We would emphasise that any proposal for a mandatory quarantine regime should be introduced only following careful consideration of all relevant rights concerns, and in consultation with the Oireachtas and with relevant expert bodies, including the Irish Human Rights and Equality Commission.

Your sincerely,

Liam Herrick

Executive Director
Irish Council for Civil Liberties