



COVERSHEET

Minister	Hon Chris Hipkins	Portfolio	COVID-19 Response
Title of Cabinet paper	Managed Isolation and Quarantine charges for temporary entry class visa holders and extension of charging for MIQ for returning New Zealanders	Date to be published	21 June 2021

List of documents that have been proactively released

Date	Title	Author
15 February 2021	Managed Isolation and Quarantine charges for temporary entry class visa holders and extension of charging for MIQ for returning New Zealanders	Office of the Minister for COVID-19 Response
15 February 2021	CAB-21-MIN-0016, Managed Isolation and Quarantine Charges for Temporary Entry Class Visa Holders	Cabinet Office
March 2021	Supplementary Analysis Report: Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020	MBIE
18 March 2021	COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021	Office of the Minister for COVID-19 Response
18 March 2021	LEG-21-MIN-0028, COVID-19 Public Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the following reasons; Confidential advice entrusted to government, free and frank opinions, legal professional privilege, and confidential advice to government.

In Confidence

Office of the Minister for COVID-19 Response
Chair, Cabinet Legislation Committee

COVID-19 Public Health Response (Managed Isolation and Quarantine Charges)
Amendment Regulations 2021

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021 (Regulations).

Policy

All 'temporary entry class visa holders' liable for the higher Managed Isolation and Quarantine (MIQ) fee

- 2 On 15 February 2021, Cabinet agreed [CAB-MIN-21-0016] to amend the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 so that:
 - 2.1 temporary entry class visa holders who were ordinarily resident at 19 March 2020 and left on or before that date are liable to pay charges; and
 - 2.2 all temporary entry class visa holders are liable to pay the prescribed MIQ fee of:
 - 2.2.1 \$4,800 (GST exclusive) for the first or only person in the room;
 - 2.2.2 \$2,600 (GST exclusive) for an additional adult in the same room;
 - 2.2.3 \$1,400 (GST exclusive) for an additional child (3-17 years) in the same room.
- 3 The proposed Regulations give effect to these decisions.
- 4 Temporary entry class visa holders include visitor visa holders, student visa holders, work visa holders and limited visa holders. Currently, temporary entry class visa holders are liable for the standard MIQ fee of \$2,696 + GST unless they were 'ordinarily resident' in New Zealand at 19 March 2020 (and left at or before that time).
- 5 The change will bring the fee level for all temporary entry class visa holders to the same level as that of 'other critical workers', and contribute to reducing the MIQ costs borne by the Government and taxpayers. The change, which is proposed to happen on 25 March 2021, will capture most international

students scheduled to arrive in New Zealand from April 2021, as well as all other temporary entry class visa holders due to arrive on and from 25 March.

Extend the minimum period that returning New Zealand citizens and permanent residents must remain in the country to not be liable to pay MIQ fees from 90 days to 180 days

- 6 Cabinet also agreed in principle to extend the minimum time that returning New Zealand citizens and permanent residents must remain in the country to not be liable to pay MIQ fees from 90 days to 180 days from the date of their arrival [CAB-21-MIN-0016]. This in principle agreement was subject to further policy and legal advice being provided to myself and the Attorney General.
- 7 We have received this advice and are satisfied that the change aligns with the primary objective of the MIQ fees system to recover some of the costs of MIQ services to make the provision of MIQ services financially sustainable. It also aligns with the secondary objective of lowering demand for MIQ services related to short-term travel.
- 8 Any New Zealand citizen or permanent resident who leaves New Zealand within 180 days of their return would be liable for the relevant fee (starting from \$2,696 + GST for the first or only person in a room). This change will come into effect on 1 June 2021 to allow time to publically signal the change and for New Zealanders and permanent residents to amend their travel plans if required.

Application to New Zealand citizens in the Cook Islands, Niue and Tokelau

- 9 Cabinet also authorised me as the Minister for COVID-19 Response to make decisions on any matters, consistent with the policy proposals to give effect to Cabinet's decision in the paper considered on 15 February 2021 [CAB-MIN-2021 refers].
- 10 As a result of the policy decision to extend the minimum period that returning New Zealanders must remain in the country to not be liable for fees from 90 days to 180 days, a consequential amendment to the Regulations is required. These proposed changes are also carried over and applied to New Zealand citizens who are ordinarily resident in Cook Islands, Niue or Tokelau and are travelling via New Zealand to the Cook Islands, Niue or Tokelau. This consequential amendment to the Regulations will maintain parity across New Zealand citizens in the Realm of New Zealand.

Minor and technical changes

- 11 Cabinet also noted my intention to progress minor and technical changes to ensure that exemptions from MIQ fees for New Zealanders and qualifying Australians apply in the context of quarantine-free travel with Australia, the Cook Islands and Niue [CAB-21-MIN-0016]. The proposed Regulations include this decision.

In addition to previously agreed matters, I am seeking Cabinet agreement on the following changes to the MIQ fees regime

Agree to carve out in the Regulations air crew and maritime crew (as temporary entry class visa holders) to not pay the higher MIQ fee

- 12 I seek Cabinet's agreement that air crew and maritime crew (as temporary entry class visa holders) are not liable to pay the higher MIQ fee and retain liability for the standard fee of \$2,696 + GST. The proposed Regulations reflect this decision by carving out air crew and maritime crew from the higher fee.
- 13 Air and maritime crew are distinct from other groups of temporary visa holders. They generally only stay in MIQ for short periods (between 1-3 days), and sometimes have several stays per week. They pay MIQ fees on a pro rata basis.
- 14 The higher MIQ fee could have an adverse impact on the aviation and maritime sectors. An increase in MIQ costs could further risk the economic viability of the airlines, which could lead to an increase in prices for freight or passengers, or ultimately their withdrawal of services to and operations in New Zealand.
- 15 An increase to the MIQ charge for maritime crew could also have implications for the international shipping supply chain, crew changes of ships as well as New Zealand's ability to assist the repatriation of Pacific Island seafarers back to their home countries.
- 16 Maritime crew who are classed as 'other critical workers' (i.e. the Russian fishing crew) will continue to be subject to the critical worker fee as set out in the Regulations.

Agree to the proposed treatment of different visa classes travelling together

- 17 I seek agreement to the proposed Regulations specifying that temporary entry class visa holders sharing a room in MIQ with a person liable for the \$2,696 + GST fee will also be liable for the lower fee level of \$950 (incl. GST) for the second adult in a room and \$475 (incl. GST) for the child (as a resident fellow). An approved fee waiver for the first person is usually applied to all family members sharing the room. This change is also broadly consistent with how the Regulations treat family members of people who are exempt or not liable for fees.

Agree to amend the Regulations to clarify the criteria for fee waivers on the grounds of 'undue financial hardship'

- 18 I seek agreement to amending the Regulations to specify that another consideration when assessing a MIQ fee waiver on the grounds of 'undue financial hardship' is 'the person's reason for travel', such as an overseas holiday or business travel.

- 19 This is already a factor that is taken into account when MBIE considers applications for a waiver. However, the amendment will provide clarity and transparency to travellers, and support the smooth processing of waiver applications.

Timing and 28-day rule

- 20 I seek a waiver to the 28-day rule for the amendments relating to temporary entry class visa holders so these changes can come into force on 25 March 2021. A waiver is necessary to ensure that the international students (as temporary entry class visa holders) due to arrive in New Zealand from 1 April 2021 are charged the prescribed higher MIQ fee. Officials will publicise the changes to the Regulations as soon as possible following gazettal.
- 21 I also seek a waiver to the 28-day rule for the amendments relating to exemptions for quarantine-free travel, and clarifying the criteria for fee waivers on the grounds of undue financial hardship so these changes can come into force on 25 March 2021. This waiver is sought on the grounds that both changes are minor. The exemptions for quarantine-free travel change also confers only benefits for the public.
- 22 I am not seeking a waiver for commencement of the amendments which change the liability period to 180 days. I propose that this change comes into force on 1 June 2021.

Compliance

- 23 The Regulations comply with the:
- 23.1 principles of the Treaty of Waitangi
 - 23.2 rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
 - 23.3 principles and guidelines set out in the Privacy Act 1993
 - 23.4 relevant international standards and obligations
 - 23.5 Legislation Guidelines (2018 edition).

Compliance with the principles of the Treaty of Waitangi

- 24 The proposed amendments relating to temporary entry class visa holders are not expected to have implications for Māori returning home to New Zealand as they would not be entering under the temporary visa class exception.
- 25 MIQ does not currently hold data to demonstrate how proposed changes will affect Māori individuals and whānau intending to return to New Zealand for less than 180 days, however, we would expect the scale of the impact on the number of Māori to be small.

26 We have not engaged with Māori on the proposed changes to the Regulations and this may give rise to issues of the Crown not meeting its responsibilities under the Treaty of Waitangi.

27

Confidential advice to Government

28 To address these, MIQ considered at the time that some of these issues could be addressed in operational policy, including ensuring tikanga Māori is considered when deciding the outcome of fee waivers. These settings remain in place under the proposed changes to the Regulations. Confidential advice to Government
we intend to look at the system as a whole to understand the impacts on whānau, hapū, iwi and wider Māori communities – with a particular focus on whether the Crown has met its responsibilities under the Treaty of Waitangi.

Statutory prerequisites before making the Regulations

29 The COVID-19 Public Health Response Act 2020 requires that before I can recommend making regulations which set charges for MIQ, I must be satisfied of the following matters:

- 29.1 the charges concerned relate to managed isolation or quarantine facility (MIQF) costs (including direct and indirect costs);
- 29.2 the prescribed charges recover from any class of persons no more than an estimate of the actual and reasonable MIQF costs incurred in relation to that class (including both direct and indirect costs);
- 29.3 there is appropriate provision to grant relief from the payment of the prescribed charges in circumstances where payment of the charges would cause undue financial hardship; and
- 29.4 the prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990 (NZBORA).

- 30 I am satisfied that these prerequisites are met. I have also consulted with the Minister of Health, which I am required to do in relation to cost recovery Regulations.
- 31 The proposed fee changes relate to MIQ costs. The fees are less than the actual costs of MIQ because they do not include costs of MBIE's partner agencies or other additional reasonable costs.
- 32 The fee level remains unchanged for New Zealand citizens and permanent residents. The MIQ charge of \$2,696 + GST for the first person is set below the accommodation and food costs for the lowest cost MIQ facility.
- 33 New Zealand citizens, permanent residents and temporary entry class visa holders can apply for grant relief from the MIQ fees in circumstances where payment would cause undue financial hardship.
- 34 Given the changes align with the primary and secondary objective of the MIQ fees system (see paragraph 7), I consider the proposed changes to the Regulations, including the extension of the minimum period to not be liable for fees from 90 days to 180 days, to be a justified limitation on New Zealand citizens and permanent residents' rights to return to New Zealand. The proposed changes also will not affect the range of measures available to mitigate the impact on New Zealanders and to impair rights and freedoms as little as possible to achieve the objective.
- 35 The proposed changes for temporary entry class visa holders do not engage the right to freedom to enter New Zealand contained in s 18(2) NZBORA because they are by definition not New Zealand citizens.
- 36 I have also considered whether the proposed changes for temporary entry class visa holders and their families engage s 19 NZBORA which sets out that everyone has the right to be free from discrimination on prohibited grounds. Prohibited grounds of discrimination include ethnic or national origins, which includes nationality or citizenship. Legal professional privilege

Regulations Review Committee

- 37 I do not consider there are grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 38 The Parliamentary Counsel Office certified the draft Regulations as being in order for submission to Cabinet.

Impact Analysis

- 39 Due to time constraints, a Regulatory Impact Statement (RIS) was not produced for this Cabinet Paper. Pursuant to the Cabinet's impact analysis requirements, the Regulatory Impact Analysis team at the Treasury has agreed with MBIE on the nature and timing of a Supplementary Analysis Report (SAR) for the proposal COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021.

Publicity

- 40 A communications plan will be used to ensure widespread awareness of the proposed changes to the fees regime following gazettal. The proposal to make temporary entry class visa holders liable for the higher MIQ fee was already publically announced on 2 March 2021.

Proactive release

- 41 This paper will be proactively released following enactment of the regulation, with redactions made as appropriate, including to address issues of legally privileged advice, commercial sensitivity and foreign relations.

Consultation

- 42 The following agencies were consulted on the changes: Ministry of Education, the Treasury, Ministry of Health, Ministry of Justice, Ministry of Foreign Affairs and Trade, Ministry of Transport, Ministry of Business, Innovation and Employment (Immigration policy), Maritime New Zealand, and Immigration New Zealand.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 15 February 2021 Cabinet agreed to increase MIQ fees for all temporary entry class visa holders, and extend the minimum period for returning New Zealanders and permanent residents to be in the country to not be liable for fees to 180 days (subject to final decisions by the Attorney General and the Minister for COVID-19 [CAB-21-MIN-0016];
- 2 **note** that the Attorney General and the Minister for COVID-19 Response agreed to increase the minimum period for returning New Zealanders and permanent residents to be in the country and not be liable for MIQ fees to 180 days;
- 3 **note** as a result of the policy decision made by the Attorney General and the Minister for COVID-19 Response (outlined above), a consequential amendment to the Regulations is required to carry over and apply the proposed changes to New Zealand citizens who are ordinarily resident in Cook Islands, Niue or Tokelau and are travelling via New Zealand to the Cook Islands, Niue or Tokelau – this change is intended to maintain parity for New Zealand citizens throughout the Realm of New Zealand;
- 4 **note** that in addition to the previously agreed matters above, I am also seeking Cabinet agreement on further changes to the MIQ fees regime;
- 5 **note** that the higher MIQ fee for air crew and maritime crew (as temporary entry class visa holders) could have an adverse impact on the aviation and maritime sectors;
- 6 **agree** to carve out in the Regulations air crew and maritime crew to not pay the higher MIQ fee and retain liability for the standard fee of \$2,696 + GST;
- 7 **agree** to specifying in the Regulations that temporary entry class visa holders sharing a room in MIQ with a family member or partner who is liable for the \$2,696 + GST fee will also be liable for the lower fee level of \$950 (incl. GST) for the second adult in a room and \$475 (incl. GST) for the child;
- 8 **agree** to amend the Regulations to clarify the criteria for fee waivers on the grounds of 'undue financial hardship';
- 9 **note** that the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021 will give effect to the decisions referred in the paragraphs above;
- 10 **authorise** the submission to the Executive Council of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021;
- 11 **note** that Part 1 amendments of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021 will come into force on 25 March 2021;

- 12 **note** that a waiver of the 28-day rule for Part 1 amendments of the Regulations is sought:
- 12.1 so the amendments can come into force on 25 March 2021
 - 12.2 on the grounds that new fees are in place so the international students due to arrive in New Zealand from April 2021 are charged the prescribed the MIQ fee
 - 12.3 on the grounds that the other changes are minor, and confers only benefits for the public;
- 13 **agree** to waive the 28-day rule so that the Part 1 amendments of the Regulations can come into force on 25 March 2021;
- 14 **note** that Part 2 amendments of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021 will come into force on 1 June 2021;

Authorised for lodgement

Hon Chris Hipkins

Minister for COVID-19 Response