



COVERSHEET

Minister	Hon Chris Hipkins	Portfolio	COVID-19 Response
Title of Cabinet paper	Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020	Date to be published	2 March 2022

List of documents that have been proactively released

Date	Title	Author
November 2021	Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020	Office of the Minister for COVID-19 Response
25 November 2021	Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 LEG-21-MIN-0210	Cabinet Office

Information redacted

NO

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IN-CONFIDENCE

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

Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020

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 (No 4) 2021.

Background

- 2 The COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations) were introduced in August 2020 to recover some of the costs of Managed Isolation and Quarantine (MIQ) and ensure the MIQ system is economically sustainable. The Regulations provide for fees to be charged. However, since the fee system was introduced, the MIQ system has evolved considerably. More people have progressed through MIQ than originally anticipated, including non-New Zealand citizens travelling on border exemption visas.
- 3 MBIE has undertaken a review of the fees system and has identified a number of opportunities to ensure that the system delivers on its objectives, remains equitable, and that returnees have upfront certainty about what fee they will be charged before they enter MIQ.

Policy

- 4 On 15 September 2021, Cabinet agreed to amend the Regulations [CBC-21-MIN-0104]. To give effect to Cabinet's decisions, the proposed Amendment Regulations seek to make the following changes:

Allow MBIE to issue invoices to returnees any time after they enter MIQ:

- 5 This will mean that MBIE will not be reliant on the accuracy of a returnee's onwards contact details and will be able to verify any information provided while a returnee is in MIQ. It will also enable MBIE to address any questions returnees have about fee waivers and options to pay by instalment during that time. This has the potential to recover more of the costs of MIQ without limiting the rights of New Zealanders to return home.

Charge families of up to 12 people based on their travel group as registered in the Managed Isolation Allocation System (MIAS):

I N C O N F I D E N C E

- 6 MBIE will charge fees for families of up to 12 people based on their travel group as registered in the Managed Isolation Allocation System (MIAS). This would mean that if a family group of up to 12 people was spread over more than one room, only one 'first adult' fee would be incurred. I consider that this change will bring significant equity benefits to larger families, including Māori and Pacific families, and to families with complex health and disability needs.

Widen the definition of who is considered a 'family member'

- 7 The definition of a 'family member' is being extended in the Regulations to include 'any person who shares a legal or biological relationship or who is whānau or another culturally recognised family group'.

Amend the list of groups exempted from MIQ charges:

- 8 The following groups of people exempted from MIQ charges is expanded to include:
- 8.1 All caregivers entering MIQ to provide support for minors and elderly returnees or returnees with significant health needs, regardless of whether the returnee receiving care is liable for charges;
 - 8.2 Deportees entering New Zealand from all countries;
 - 8.3 People who enter New Zealand after, or as part of, a medical air transfer; including people entering as part of medical referrals and medical evacuations;
 - 8.4 People entering New Zealand under the Samoan Health Partnership, administered by the Ministry of Foreign Affairs and Trade;
 - 8.5 New Zealand citizens who are returning to the Cook Islands, Niue or Tokelau for more than 180 days; and
 - 8.6 People who have been extradited to New Zealand.
- 9 The fee exemption for people entering New Zealand for the purpose of attending the Christchurch mosques sentencing will be removed as this event has already taken place.

Create a new Ministerial power to exempt classes of people from MIQ charges where they enter New Zealand to assist with a national emergency or to response to a nationally significant event:

- 10 Cabinet agreed to amend the Regulations to introduce a power for the Minister to exempt classes of people for MIQ charges where people enter New Zealand to assist with a national emergency or to respond to a nationally significant event. Since that decision, I have further reflected on the nature of this power.
- 11 On 8 November 2021, Cabinet agreed to amend the regulations to include a Ministerial class waiver power for groups of people included in the

I N C O N F I D E N C E

I N C O N F I D E N C E

Afghanistan resettlement response, and amendments are currently being drafted [CBC-21-MIN-0122, CAB-21-MIN-0454.01]. These changes will mean that fees will be waived for Afghan evacuees who have already entered MIQ. Extending the exemption power would allow the system to respond to Afghan evacuees who are yet to enter MIQ and would be more efficient to administer.

- 12 However, I am now seeking Cabinet's agreement to amend the Regulations to extend the Ministerial power to exempt to include classes of people in relation to international humanitarian events.
- 13 I consider this change would allow the system to respond to incoming Afghan evacuees and any further unforeseen international humanitarian crises that require people to enter MIQ who may be liable for MIQ charges, but where it would be unreasonable to charge people for MIQ in the circumstances. For example, the Christchurch Mosque attack trial and sentencing were nationally significant events that were within scope, and the Afghanistan resettlement response is an international humanitarian event where I have decided not to charge Afghan evacuees as it would be unreasonable.
- 14 This will bring additional flexibility to the fees regime and allow the system to respond to humanitarian circumstances where charging people for MIQ fees would be unreasonable.
- 15 This Ministerial power will therefore apply to people entering New Zealand:
 - 15.1 To assist with a national emergency; or
 - 15.2 To respond to a nationally significant event, and, if Cabinet agrees,
 - 15.3 As a result of an international humanitarian event, where the Minister for COVID-19 Response deems it appropriate.
- 16 This exemption power will not apply to people entering New Zealand to attend or returning from business, or entertainment events such as concerts, sporting events and conferences. These types of events have commercial benefits to organisers, and participants are likely to enjoy private benefits that would not justify taxpayers subsidising their MIQ costs.
- 17 Granting exemptions from MIQ charges for people travelling for business or entertainment is not consistent with the purpose of the MIQ fees regime which is to recover at least in part the cost of MIQ services borne by the taxpayer.
- 18 The Regulations will require any new classes of persons exempted from MIQ charges to be published in the Gazette and notified on a New Zealand government website. This is consistent with the current Ministerial power in the Regulations to determine the class of people who are subject to a waiver or refund as a result of a change in border settings.

Clarify the definition of a critical worker's 'supporting agency' to include a New Zealand-based industry body:

I N C O N F I D E N C E

IN CONFIDENCE

- 19 An 'other critical worker's' 'supporting agency' is defined as the 'employer or other organisation who made the request under immigration instructions for approval-in-principle for the other critical worker and any spouse, partner or child of the other critical worker to travel to New Zealand'. However, for Recognised Seasonal Employees (RSE workers), the liable person is technically each individual.
- 20 Cabinet has agreed to amend the Regulations to clarify that, if there is no supporting agency, the relevant New Zealand-based industry body (for example, Horticulture New Zealand in the case of RSE workers) is liable for the other critical worker's MIQ charges.

Issuing invoices for groups of other critical workers:

- 21 Where an organisation has agreed to pay on behalf of a group of 'other critical workers', the Regulations will allow MBIE to issue invoices in the name of this organisation. I have agreed to delegate authority to the Chief Executive of MBIE for this purpose.

IN CONFIDENCE

Timing and 28-day rule

22 The indicative timeframe for the changes to the Regulations proposed in this paper coming into force are outlined in the table below:

Milestone/Activity	Timeframe
LEG paper and Regulations lodged	18 November 2021
LEG paper considered by LEG	25 November, 2021
LEG paper considered by Cabinet and Executive Council	29 November 2021
Gazette Regulations	2 December 2021
Amended Regulations come into force	30 December 2021

Compliance

23 The regulations comply with each of the following:

- 23.1 the principles of the Treaty of Waitangi;
- 23.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
- 23.3 the principles and guidelines set out in the Privacy Act 2020;
- 23.4 relevant international standards and obligations;
- 23.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

24 The proposed changes are largely technical in nature and aim to provide a more equitable MIQ fees regime.

Regulations Review Committee

25 The amendments are minor and technical in nature, and will not make anyone who is not already liable, liable for fees. For this reason, there is unlikely to be grounds for the Regulations Review Committee to draw the disallowable instrument or regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

26 The draft regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet, subject to the statutory

prerequisites relating to regulations in the COVID-19 Public Health Response Act 2020 being met.

Impact Analysis

Regulatory Impact Statement

- 27 A Regulatory Impact Assessment has been prepared for the following two proposals:
- 27.1 charging families/whānau for MIQ charges based on their travel group, as entered in MIAS; and
 - 27.2 Exempting Caregivers entering MIQ to care for individuals from MIQ charges.
- 28 Treasury's Regulatory Impact Analysis team has determined that the proposals 1-13 (attached in **Appendix A**) are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities. Additionally, proposal 10 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has been addressed by existing impact analysis [SWC-21-MIN-0067 refers] and proposal 11 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it repeals or removes redundant legislative provisions.
- 29 A quality assurance panel with representatives from MBIE has reviewed the Regulatory Impact Assessment. The panel considers that it meets quality assurance criteria.

Publicity

- 30 No communications are planned as the amendments are minor and technical in nature.

Proactive release

- 31 I intend to proactively release this Cabinet paper, excluding legally privileged material and subject to any redactions consistent with the Official Information Act 1982.

Consultation

- 32 The following Government agencies were consulted: the Department of the Prime Minister and Cabinet, the Ministry of Health, Te Puni Kōkiri, the Ministry for Primary Industries, the Ministry for Pacific Peoples, the Ministry of Foreign Affairs and Trade, the Ministry of Transport, the Ministry of Justice, and The Treasury.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 15 September 2021, the Cabinet Business Committee agreed to a number of minor and technical amendments to the Regulations [CBC-21-MIN-0104 refers], including:
 - 1.1 Allowing MBIE to issue invoices to returnees any time after they enter MIQ;
 - 1.2 Charging families of up to 12 people based on their travel group as registered in the Managed Isolation Allocation System (MIAS);
 - 1.3 Widening the definition of who is considered a 'family member';
 - 1.4 Amending the list of groups exempted from MIQ charges;
 - 1.5 Clarifying the definition of a 'supporting agency' to include a New Zealand-based industry body (such as Horticulture New Zealand in the case of RSE workers);
 - 1.6 Clarifying that the 'first person in a room' is the adult who would be charged the least;
 - 1.7 Creating a new Ministerial power to exempt classes of people from MIQ charges in specific circumstances.
- 2 **agree** to extend the new Ministerial power to exempt classes of people from MIQ charges to include where people enter New Zealand as part of, or for the purpose of assisting with, an international humanitarian relief event, where the Minister of COVID-19 Response deems it appropriate;
- 3 **note** that I have agreed to delegate authority to the CE of MBIE to send invoices to groups of 'other critical workers' where an organisation has agreed to pay on their behalf;
- 4 **note** that the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No 4) 2021 will give effect to the decision referred to in paragraph 1 above;
- 5 **authorise** the submission to the Executive Council of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No 4) 2021;
- 6 **note** that the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations (No 4) 2021 will come into force on 23 December 2021;
- 7 **note** that section 32B and 32C of the of the COVID-19 Public Health Response Act 2020 require that, before making regulations which set charges for MIQ, the responsible Minister must be satisfied of the following matters:

I N C O N F I D E N C E

- 7.1 The charges concerned relate to managed isolation or quarantine facility (MIQF) costs (including direct and indirect costs); and
 - 7.2 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); and
 - 7.3 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
 - 7.4 The prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
- 8 **note** the advice of the Minister for COVID-19 Response, that this requirement has been met.

Authorised for lodgement

Hon Chris Hipkins
Minister for COVID-19 Response

I N C O N F I D E N C E

Appendix A – list of Regulatory proposals exempt from Regulatory Impact Assessment requirements:

Proposal Number	Proposal
1	Exempting family members travelling together with someone not liable for charges from MIQ charges and clarifying who is viewed as 'family'
2	Exempting deportees entering New Zealand from MIQ charges
3	Exempting extradited people entering New Zealand from MIQ charges
4	Exempting people entering New Zealand after, or as part of, a medical air transfer from MIQ charges
5	Exempting people entering New Zealand to receive medical treatment under the New Zealand Medical Treatment Scheme or the Samoan Health Partnership from MIQ charges
6	Exempting New Zealand citizens who are returning to the Cook Islands, Niue or Tokelau for more than 180 days from MIQ charges
7	Introduce a power for the Minister to exempt classes of people from MIQ charges under certain circumstances
8	Amending the Regulations to define the 'first person in a room' is the adult who would be charged the least, for the avoidance of doubt
9	Amending the Regulations to remove the requirement to send invoices even when a fee waiver has been granted
10	In order to ensure current fee liability settings for New Zealanders are maintained when the liability starting point is reversed as part of the COVID-19 Public Health Response Amendment Bill changes, the Regulations will need to be amended so that New Zealand citizens and residents who last departed New Zealand before 11 August 2020 and who are visiting for more than 180 days are added to the list of groups who are exempt from charges
11	Removing the exemption for people entering New Zealand for the purpose of attending the Christchurch mosques sentencing, as this event has taken place
12	Moving the fee exemption for diplomats from the COVID-19 Public Health Response Act 2020 to the Regulations, where other exemptions sit
13	Clarifying the definition of a other critical worker's 'supporting agency' so that it reflects the original policy intent.