



BRIEFING

Cabinet Legislation Committee: Managed Isolation and Quarantine (MIQ) charges for temporary entry class visa holders and extension of charging for returning New Zealanders

Date:	25 February 2021	Priority:	High
Security classification:		Tracking number:	2021 -2525

Action sought		
	Action sought	Deadline
Hon Chris Hipkins Minister for COVID-19 Response	Agree to Ministerial consultation and lodgement for the MIQ fees paper for LEG on 18 March 2021	1 March 2021

Contact for telephone discussion (if required)				
Name	Position	Telephone	1st contact	
Kara Isaac	General Manager, MIQ Policy	Privacy of natural persons		✓
Privacy of natural persons	Manager, MIQ Policy			
	Senior Policy Advisor, MIQ Policy			

The following departments/agencies have been consulted

The LEG paper was reviewed by the 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), and Immigration New Zealand.

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <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 Withdrawn |

Comments



BRIEFING

Cabinet Legislation Committee: Managed Isolation and Quarantine (MIQ) charges for temporary entry class visa holders and extension of charging for MIQ for returning New Zealanders

Date:	25 February 2021	Priority:	High
Security classification:		Tracking number:	2021 -2525

Purpose

To provide you with a draft paper for Cabinet Legislation Committee (LEG) on 18 March 2021, for ministerial consultation.

Recommended action

The Ministry of Business, Innovation and Employment (MBIE) recommends that you:

- a **Note** that you taking a Cabinet paper to LEG on 18 March 2021 seeking authorisation to submit to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021 (Amendment Regulations);

Noted

- b **Note** that the Amendment Regulations seek to increase MIQ fees for all temporary entry class visa holders, and extend the period that returning New Zealanders and permanent residents must remain in the country to not be liable to pay MIQ fees to 180 days;

Noted

- c **Agree** to Ministerial consultation on the draft LEG paper;

Agree Disagree

- d **Agree** that following Ministerial consultation and updates if required, that the final LEG paper will be lodged on 11 March 2021;

Agree Disagree

Kara Isaac
General Manager, MIQ Policy
MIQ, MBIE

25 / 2 / 21

Hon Chris Hipkins
Minister for COVID-19 Response

9 / 3 / 21

Background

1. On 15 February 2021, Cabinet agreed to increase MIQ fees for all temporary entry class visa holders. Cabinet agreed that the changes would come into effect on 25 March 2021, before the first cohort of international students (bachelors and above) arrive from April 2021. International students are temporary entry class visa holders.
2. Cabinet also agreed in principle to extend the minimum period that returning New Zealanders 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. Cabinet delegated authority to you, as the Minister for COVID-19 Response and the Attorney-General to make final decisions on the proposed extension (Briefing 2021-2023)
3. On 23 February 2021, you and the Attorney General received a briefing seeking your final agreement to increase the liability period to 180 days (briefing 2021-2023 refers). The attached LEG paper was drafted in anticipation that you agreed to this change.
4. Cabinet also noted that you intend to progress minor and technical changes to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 to ensure the exemptions from MIQ fees for New Zealanders continue to operate in the context of a safe travel zone.
5. In order to meet the 25 March timeline, the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021 (Amendment Regulations) needs to be considered by Cabinet Legislative Committee (LEG) on 18 March. The Amendment Regulations enact the proposed changes to the MIQ fees regime.

Draft LEG paper for Ministerial consultation

6. Attached is the draft LEG paper for consultation with your Ministerial colleagues. Following Ministerial consultation and updates if required, we seek your agreement to lodge the paper for LEG on 11 March 2021.
7. The Parliamentary Counsel Office (PCO) is currently drafting the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021. As such, the references in the LEG paper to specific regulation sections will be finalised once drafting is complete.
8. The COVID-19 Public Health Response Act 2020 requires that the Minister of Health is consulted on MIQ related regulations. We consulted with the Ministry of Health on the draft LEG paper.
9. The LEG paper seeks a waiver to the 28-day for changes relating to temporary entry class visa holders in the Regulations so these changes can come into force on 25 March 2021. This will ensure that the cohort 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.
10. The paper also seeks a waiver for the amendments relating to exemptions for quarantine-free travel so the changes can come into force on 25 March 2021. This waiver is sought on the grounds that the change is minor and confers only benefits for the public.
11. The changes in the Regulations relating to extending the liability period to 180 days will come into force 1 June 2021, so a waiver of the 28-day period is not required (subject to your agreement in briefing 2021-2023).

Next steps

12. We recommend the following timeline for the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021 to come into force:

Action	Date
Ministerial consultation on LEG paper	1 March – 8 March 2021
Final LEG paper provided to the Minister's Office for lodgement	10 March 2021
LEG paper and regulations lodged with Cabinet office	11 March 2021
LEG meeting	18 March 2021
Cabinet and Executive Council	22 March 2021
Gazette regulations	25 March 2021
Changes for temporary entry class visa holders come into force	25 March 2021 (subject to Cabinet waiving 28-day rule)
Changes to extend the charging period for returning New Zealanders and permanent residents to 180 days come into force	1 June 2021

13. We propose to provide you with the final LEG paper for final consideration and lodgement, on 10 March 2021. We will provide your office with the draft Amendment Regulations and the Executive Council advice sheet (Goatskin) for your signature at the same time, along with talking points for LEG.
14. We are developing a communications plan to ensure widespread awareness of the changes to the MIQ fees regime, after the changes are approved at Executive Council. We are working closely with the Ministry of Education to communicate the changes to international students.

Annex

Annex One: Cabinet Legislation Committee paper for the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021

**Annex One: Cabinet Legislation Committee paper for the COVID-19
Public Health Response (Managed Isolation and Quarantine Charges)
Amendment Regulations 2021**

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 The proposed Regulations seek to make all temporary entry class visa holders liable for the higher MIQ fee of \$4,800 + GST for the first or only person in a room. The Regulations amend the COVID-19 Public Health Response (Managed Isolation & Quarantine Charges) Regulations 2020.
- 3 Temporary entry class visa holders include visitor visa holders (tourists and family members visiting New Zealand), 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).
- 4 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.
- 5 The proposed Regulations will:
 - 5.1 amend the Regulations so that 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
 - 5.2 set that all temporary entry class visa holders are liable to pay the prescribed MIQ fee of:
 - 5.2.1 \$4,800 (GST exclusive) for the first or only person in the room;

- 5.2.2 \$2,600 (GST exclusive) for an additional adult in the same room;
- 5.2.3 \$1,400 (GST exclusive) for an additional child (3-17 years) in the same room.

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 The proposed Regulations also seek to extend the minimum period that returning New Zealanders and permanent residents must remain in the country to not be liable to pay MIQ fee from 90 days to 180 days from the date of their arrival.
- 7 This 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 and 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.

Consequential amendment

- 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 change

- 11 The proposed Regulations also include 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 and the Cook Islands.

Timing and 28-day rule

- 12 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.
- 13 I also seek a waiver to the 28-day rule for the amendments relating to exemptions for quarantine-free travel so these changes can come into force on 25 March 2021. This waiver is sought on the grounds that the change is minor and confers only benefits for the public.
- 14 The amendments which change the liability period to 180 days will come into force 1 June 2021, so a waiver is not required.

Compliance

- 15 The Regulations comply with the:
 - 15.1 principles of the Treaty of Waitangi
 - 15.2 rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
 - 15.3 principles and guidelines set out in the Privacy Act 1993
 - 15.4 relevant international standards and obligations
 - 15.5 Legislation Guidelines (2018 edition).

Compliance with the principles of the Treaty of Waitangi

- 16 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.
- 17 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.
- 18 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.
- 19 Some of the concerns raised in the initial development of the principal Regulations are still relevant here. In July 2020, recommendations were made by a group of a small number of iwi leaders to the All of Government Caring for Communities team in relation to fee waivers (which were echoed by the Māori Law Society), including:

- Decision makers should be educated in tikanga to protect against discrimination in decision-making
- Tikanga Māori should be incorporated into the waiver criteria so that cultural considerations are adequately considered by decision-makers (including supporting Māori to return to their whenua to keep home fires burning 'ahi kā' or practices and obligations associated with tangihanga)
- The Government should take a partnership approach, including by involving Māori, in decision making.

20 To address these, MIQ considered at the time 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. However, as part of the broader review of the MIQ fees system, 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

21 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:

- 21.1 the charges concerned relate to managed isolation or quarantine facility (MIQF) costs (including direct and indirect costs);
- 21.2 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);
- 21.3 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
- 21.4 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).

22 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.

23 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.

- 24 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.
- 25 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.
- 26 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.

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Legal professional privilege

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Regulations Review Committee

- 29 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

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

Impact Analysis

- 31 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 the Ministry of Business, Innovation and Employment 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

- 32 A communications plan will be used to ensure widespread awareness of the proposed changes to the fees regime following gazettal.

Proactive release

- 33 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

- 34 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), and Immigration New Zealand.
- 35 The Ministry of Transport has raised concerns that international air crew are mostly temporary entry class visa holders, so increasing the MIQ fee could impact on the viability for airlines to operate in New Zealand. The impact on airlines was unknown when the policy decision for this change was made. MIQ is now part of the cost for people to enter New Zealand and the cost is still subsidised by taxpayers. Airlines that receive support through the International Air Freight Capacity (IAFC) scheme may seek extra funding through the IAFC to cover any increased costs associated with MIQ, which is inefficient. In addition, not all airlines are part of the IAFC, and the longevity of the scheme is not confirmed. The impact of these increased costs on maritime crew who need to stay in a MIQ as part of a crew change is less clear, but may raise concerns from operators. New Zealand is legally obligated to help facilitate crew changes under the Maritime Labour Convention.

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 on XXX, 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 in Recommendation 2), 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;
- 36 **note** that Cabinet also authorised 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];
- 4 **note** that the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021 will give effect to the decision referred to in paragraph 1 and 2 above;
- 5 **authorise** the submission to the Executive Council of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021;
- 6 **note** that Regulation XXX and XXX of COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2021 will come into force on 25 March 2021;
- 7 **note** that a waiver of the 28-day rule is sought:
 - 7.1 so that Regulation XXX and XXX of the Regulations can come into force on 25 March 2021
 - 7.2 Regulation XXX is 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
 - 7.3 Regulation XXX is on the grounds that the change is minor and confers only benefits for the public;

- 8 **agree** to waive the 28-day rule so that the Regulations can come into force on 25 March 2021;
- 9 **note** that Regulation **XXX** 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

DRAFT