



COVERSHEET

Minister	Hon Andrew Little	Portfolio	Minister of Immigration
Title of Cabinet paper	Changes to Immigration Regulations for the new Skilled Migrant Category	Date to be published	18 September 2023

List of documents that have been proactively released

Date	Title	Author
May 2023	Changes to Immigration Regulations for the new Skilled Migrant Category	Office of the Minister of Immigration
31 May 2023	Changes to Immigration Regulations for the new Skilled Migrant Category DEV-23-MIN-0097 Minute	Cabinet Office

Information redacted

YES

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Some information has been withheld for the reasons of Confidential advice to Government.

In Confidence

Office of the Minister of Immigration

Cabinet Economic Development Committee

Changes to Immigration Regulations for the new Skilled Migrant Category

Proposal

- 1 This paper seeks agreement to authorise me as Minister of Immigration to instruct Parliamentary Counsel Office (PCO) to make required changes to the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (the Immigration Regulations) to support implementation of the new Skilled Migrant Category residence visas.

Relation to government priorities

- 2 This is a technical requirement to support implementation of the changes to Skilled Migrant Category residence visas.

Executive summary

- 3 This paper seeks agreement on changes to the Immigration Regulations to implement the new Skilled Migrant Category (SMC) residence visa.
- 4 I am proposing to implement an automated Expression of Interest (EOI) and Invitation to Apply (ITA) framework for SMC applications. This will provide a seamless experience for applicants, while still deterring individuals from submitting clearly ineligible applications (and paying the associated fee and levies). I recommend that the EOI fee be zero-rated.
- 5 The changes also include some minor and technical changes to provide for a fee for an online SMC residence visa application (to be the same as the current hard copy fee) and to remove references to the SMC Job Search Visa (Cabinet has already agreed to close this visa category).

Background

- 6 On 5 April 2023 the Cabinet Economic Development Committee approved a proposed new framework for the Skilled Migrant Category (SMC) residence visas [DEV-23-MIN-0049], which was confirmed by Cabinet on 11 April [CAB-23-MIN-0126].
- 7 Currently, applicants submit an Expression of Interest (EOI) and then, once selected and reviewed by Immigration New Zealand (INZ), may receive an Invitation to Apply (ITA). They must make the application within four months.

- 8 I noted that officials were continuing to work on a proposal to change this to a process where people can get to and complete a residence application in one sitting. Officials were also investigating options for reducing the number of clearly ineligible skilled residence applications lodged, to prevent individuals from applying for residence and paying a fee and levies (totalling \$4,290) when their residence application has no likelihood of being approved.

An Expression of Interest / Invitation to Apply framework

- 9 The EOI / ITA framework is the legal mechanism provided for in the Immigration Act 2009 (the Act) to manage ineligible applications being made. The new process differs from the current process of manual assessment by an immigration officer in that going forward the EOI will be assessed online based on the claims made by the person and INZ's automated system applying criteria predetermined in accordance with the immigration instructions. If the EOI meets the criteria, then the person will be invited to apply for residence. Eligible applicants will experience a one-step process, with four months to complete submission of their application.
- 10 Cabinet authorised me as Minister of Immigration to certify immigration instructions for an EOI and ITA process to apply to the new Skilled Migrant Category where the Minister considers it necessary.
- 11 I also recommend making the EOI fee zero-rated. MBIE officials have advised that if the cost of the EOI was to be portioned separately, the estimated fee would be in the range of \$20 per EOI, or approximately \$100,000 per annum. However I consider that it should be zero-rated because:
- 11.1 The cost of developing the application process has already been included in the estimated implementation costs previously considered
 - 11.2 This will now be an automated process with no manual assessment (unlike the current manual assessment process)
 - 11.3 The cost of an EOI inclusive process and one without an EOI are essentially the same (as the same questions would be required), and any marginal cost for an automated system will be negligible
 - 11.4 There would be a slightly higher new cost in collecting a separate fee
 - 11.5 The amount we are considering (based on a rough fee estimate) is under \$100,000
- 12 We can also assume that almost all people who go through the EOI / ITA process will go on to make an application and pay the full SMC application fee of \$4,290). An additional fee would create a poor customer experience for relatively marginal revenue gained, particularly after the cost of collecting the fee.
- Confidential advice to Government**
- 13 I recommend that this change takes place from 16 August 2023, which aligns with the intended date of the last selection of EOIs for SMC applications under

current settings. The cut-off for submitting an EOI under current settings will be 11.59pm on 15 August, with the final draw taking place on 16 August. No EOIs submitted after 15 August will be considered and intending applicants will need to wait to submit their EOI under new SMC settings from 9 October. This will be clearly communicated to intending applicants.

- 14 Zero-rating the fee from 16 August means the change will apply to applicants under the new settings as well as anyone who submits an EOI for the previous SMC from 16 August, despite communications informing them that they will not be invited to apply for a visa.
- 15 The Treasury's Regulatory Impact Analysis team has determined that the proposals are exempt from the requirement to provide a Regulatory Impact Statement.

Authority to make changes to Immigration Regulations

- 16 Maintaining an EOI but making it automated and zero-rated requires changes to the Immigration Regulations, which were not anticipated at the time of Cabinet's previous decision. I am therefore seeking authority to instruct Parliamentary Counsel Office (PCO) to make these changes.
- 17 There are also two other minor changes required to update the Immigration Regulations, in line with agreed policy decisions. These include:
 - 17.1 Providing for a fee for an online SMC residence visa application (to be the same as the current hard copy fee)
 - 17.2 Removing references to the SMC Job Search Visa (Cabinet has already agreed to close this visa category)
- 18 I am seeking authority to instruct PCO to make these changes as well.

Financial Implications

- 19 There are no financial implications as the separate EOI bears no additional cost in addition to the SMC application fee.

Legislative Implications

- 20 These proposals will require changes to the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010. Given that the changes are relatively straightforward, and to align with the implementation of new settings under the SMC, PCO has agreed to a shortened drafting period.
- 21 I am also recommending that the amended Regulations commence as soon as possible after Cabinet decisions are taken. To enable this, I am seeking a waiver of the 28-day rule, on the basis that these changes to confer only benefits on the public.

Regulatory Impact Statement

- 22 The Treasury's Regulatory Impact Analysis team has determined that the proposals 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.

Climate Implications of Policy Assessment

- 23 There are no direct climate implications of these proposals.

Population Implications

- 24 There are no new population implications from these proposals.

Human Rights

- 25 This paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 26 MBIE officials have discussed the proposals with Treasury, who have indicated that they support this paper.
- 27 MBIE officials have consulted with PCO regarding the proposed changes to Regulations and their associated drafting timeframes.

Communications

- 28 Information on the EOI / ITA process will be included on Immigration New Zealand's website to support SMC applicants but as these are minor / technical changes, there will be no separate announcement about changes to the Immigration Regulations.

Proactive Release

- 29 This paper will be included in the proactive release of papers related to the new Skilled Migrant Category.

Recommendations

The Minister of Immigration recommends that the Committee:

- 1 note that in April 2023, Cabinet agreed to changes to the Skilled Migrant Category residence visas, including changes to streamline the application process [CAB-23-MIN-0126];
- 2 note that changes to the application process to include a zero-rated Skilled Migrant Category Expression of Interest fee to deter ineligible people from applying for a Skilled Migrant Category residence class visa unless invited to

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apply requires changes to the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010;

- 3 authorise the Minister of Immigration to instruct Parliamentary Counsel Office to make changes to the Immigration Regulations to implement a zero-rated fee for notifying an Expression of Interest to apply for a Skilled Migrant Category residence class visa, both online and in hard copy, to take effect from 16 August 2023
- 4 note that it is intended that the online Skilled Migrant Category residence visa application will have the same fee as a hard copy application, and the Immigration Regulations need to be amended to clarify that there is no difference in the fee
- 5 authorise the Minister of Immigration to instruct Parliamentary Counsel Office to make changes to the Immigration Regulations to implement other policy decisions, including
 - 5.1 Providing for a fee for an online Skilled Migrant Category residence visa application (to be equal to the hard copy fee)
 - 5.2 Removing references to the SMC Job Search Visa (Cabinet has already agreed to close this visa category)
 - 5.3 Minor and technical changes to the Immigration Regulations in accordance with these policy decisions and those previously agreed by Cabinet
- 6 note that the revised Immigration Regulations will be submitted for consideration at the Cabinet Legislation Committee meeting on 20 July, and that an exemption to the 28 day rule will be sought to enable implementation by 16 August 2023
- 7 authorise the Minister of Immigration to make minor and technical decisions, including minor policy decisions, as required to facilitate the drafting of the amendments covered by this paper, provided they are consistent with the policy agreements already provided for above.

Authorised for lodgement

Hon Michael Wood

Minister of Immigration