



COVERSHEET

Minister	Hon Andrew Little	Portfolio	Minister of Immigration
Title of Cabinet paper	Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations (No 2) 2023	Date to be published	18 September 2023

List of documents that have been proactively released		
Date	Title	Author
August 2023	Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations (No 2) 2023	Office of the Minister of Immigration
7 August 2023	Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations (No 2) 2023 CAB-23-MIN-0355.01 Minute	Cabinet Office
August 2023	Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations (No 2) 2023 [PCO 25644/4.0]	Parliamentary Counsel Office

Information redacted

NO

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.

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Office of the Minister of Immigration

Chair, Cabinet Legislation Committee

Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations (No 2) 2023

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations (No 2) 2023*.

The Policy

- 2 The *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations (No. 2) 2023* (the amendment regulations) give effect to Cabinet policy decisions to implement a new simplified points system and streamlined application process for Skilled Migrant Category (SMC) residence visas, which were agreed by Cabinet on 11 April 2023 [DEV-23-MIN-0049; CAB-23-MIN-0126].
- 3 On 6 June 2023, Cabinet agreed to amend the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (the Immigration Regulations) to:
 - 3.1 remove the fee for Expressions of Interest (EOIs) for SMC applications; and
 - 3.2 provide for a fee for online SMC applications (equivalent to the current fee for a paper application) [DEV-23-MIN-0097; CAB-23-MIN-0213].

Zero-rated fee for expressions of interest (EOIs)

- 4 The current fee for SMC EOIs is \$590 for online applications and \$710 for hardcopy applications. This fee was last updated in 2022.
- 5 The current process involves manual assessment by an immigration officer, who then issues an Invitation to Apply (ITA) for eligible applications. The new process will be an automated online assessment of the applicant's EOI responses against criteria predetermined in accordance with immigration instructions, with an automated ITA for eligible applicants. MBIE officials have estimated that the cost of delivering this automated process would be in the range of \$20 per EOI.

- 6 The previous Minister of Immigration recommended, and Cabinet agreed, to set the SMC EOI fee to zero. This is because:
- 6.1 The cost of developing the process has already been included in the estimated implementation costs previously considered.
 - 6.2 This will now be an automated process with no manual assessment.
 - 6.3 The cost of an EOI inclusive residence visa application process and one without an EOI are essentially the same (the same questions would be required), and any marginal cost for an automated system would be negligible.
 - 6.4 There would be a slightly higher new cost in collecting a separate fee.
 - 6.5 The total amount we are considering (based on a rough fee estimate) is under \$100,000.

Online application for SMC residence visa

- 7 The Immigration Regulations do not currently explicitly provide for an online residence class visa application fee for SMC. I therefore recommended, and Cabinet agreed to, changes to the Regulations to clarify that the current SMC residence visa application fee also applies to online applications [DEV-23-MIN-0097; CAB-23-MIN-0213]. The amendment regulations give effect to this decision.

Removing references to the SMC Job Search Visa

- 8 Cabinet had previously agreed to close the Job Search visa category [DEV-23-MIN-0049], and authorised removal of all references from the Immigration Regulations [DEV-23-MIN-0097]. However, officials have since discovered that this would be premature as there will still be some undecided applications (i.e. already applied for) that may be eligible for this type of visa. It is not yet possible to put an end date on this, due to the wide range of time it could take to process any individual SMC resident visa application and applicants' potential changes in circumstances.
- 9 There is no risk in keeping these provisions in place in Regulations, as the visa category can be closed at an appropriate time through Immigration Instructions, with the Regulations then aligned at a later date.
- 10 I am therefore seeking agreement to rescind the decision to remove references to the SMC Job Search Visa, and the relevant changes will be made during a future Regulation change.

Timing

- 11 I am recommending that the amendment regulations come into force as soon as possible after the decision is confirmed (7 September 2023).
- 12 The last selection of EOIs for SMC applications under current settings is on 15 August 2023. This means that there will be a gap during which time anyone submitting an EOI will be legally required to be charged a fee.
- 13 To mitigate the risk of someone submitting an EOI and paying a fee without the possibility of being issued an ITA, there will be strong communications warning people who submit an EOI after 15 August 2023 that they will not be able to be invited to apply for a residence visa, and INZ will remove the online application form. The paper form will also be updated with a warning. There is still a risk that people may submit a paper form (with a \$710 fee), but they will receive written communication telling them that they will not receive an ITA and advice on how to test their eligibility under the new SMC instructions. Finally, if an EOI is submitted, applicants will be able to request a refund through the standard refund process.

Compliance

- 14 I consider that the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 comply with:
 - 14.1 the principles of the Treaty of Waitangi;
 - 14.2 advice from the Treaty Provisions Officials Group on any Treaty of Waitangi provisions;
 - 14.3 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 14.4 the principles and guidelines set out in the Privacy Act 2020;
 - 14.5 relevant international standards and obligations;
 - 14.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 15 There are no anticipated grounds for the Regulations Review Committee to draw the amendment regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 16 The amendment regulations were certified by the Parliamentary Counsel Office (PCO) as being in order for submission to Cabinet.

Legislative Implications

- 17 This paper proposes changes to the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010. The amendment regulations are attached.

Impact Analysis

- 18 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.

Consultation

- 19 This paper was prepared by MBIE. The Treasury was consulted on the Cabinet paper and draft regulations.

Publicity

- 20 The new SMC settings were announced on 21 June 2023. Information on the EOI 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 on these changes to the Immigration Regulations.

Proactive Release

- 21 This paper will be proactively released, subject to any redactions consistent with the Official Information Act 1982.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 31 May 2023, the Cabinet Economic Development Committee agreed to the proposed changes to the application process of the Skilled Migrant Category (SMC) residence visas, to include a zero fee for SMC Expressions of Interest (EOIs) and to provide for a fee for online SMC applications [DEV-23-MIN-0097];
- 2 note that the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations (No 2) 2023* will give effect to the decision referred to in recommendation 1 above;
- 3 authorise the submission to the Executive Council of the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations (No 2) 2023*;
- 4 note that the Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations (No 2) 2023 come into force on 7 September 2023;
- 5 note that Cabinet agreed to remove references to the Job Search Visa, but that after further work officials consider this to be premature due to the

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numbers of in-flight applications and potential eligible applicants under current settings;

- 6 agree to rescind the decision relating to the removal of references to the Job Search Visa.

Authorised for lodgement

Hon Andrew Little

Minister of Immigration