



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Immigration
Title of Cabinet paper	Requirement for Foreign Nationals to Have a Booked Place in Managed Isolation to Enter New Zealand	Date to be published	16 February 2021

List of documents that have been proactively released

Date	Title	Author
26 June 2020	Requirement for Foreign Nationals to Have a Booked Place in Managed Isolation to Enter New Zealand	Office of the Minister of Immigration
24 June 2020	DEV-2020-MIN-0115	Cabinet Office
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Information redacted

YES / NO (please select)

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Some information has been withheld as it is out of scope.

In Confidence

Office of the Minister of Immigration

Cabinet Economic Development Committee

Requirement for foreign nationals to have a booked place in managed isolation to enter New Zealand

Proposal

- 1 This paper seeks agreement to introduce a requirement that foreign nationals must have a confirmed booking in a managed isolation/quarantine facility in order to be granted entry into New Zealand.

Relation to government priorities

- 2 This paper relates to the government's response to COVID-19.

Background

- 3 In order to prevent the spread of COVID-19, Cabinet has agreed that the only people who can enter New Zealand are New Zealand citizens or resident visa holders (and their families); along with some other very limited groups. In summary Cabinet agreed that the following groups are not subject to the restrictions:
 - 3.1 New Zealand citizens and residence class visa holders
 - 3.2 The partner, legal guardian or any dependent children of a New Zealand citizen or residence class visa holder
 - 3.3 Australian citizens and permanent residence class visa holders ordinarily resident in New Zealand
 - 3.4 People subject to regulation 25 or the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, which includes air and marine crew
 - 3.5 Diplomats accredited to New Zealand.
- 4 Anyone else wishing to travel to New Zealand must first apply for and be granted an exception to the border restrictions in one of a limited number of categories (e.g. under exceptional humanitarian circumstances, or as critical workers) assessed on a case by case basis.
- 5 Every person who arrives in New Zealand must spend a minimum period of 14 days in a government-run managed isolation/quarantine (MIQ) facility, unless they are excluded from this requirement on the limited grounds set out in the COVID-19 Public Health Response (Air Border) Order 2020 (e.g. aircraft pilots or flight crew members, diplomats).

New Zealand has limited places available in managed isolation/quarantine facilities, and demand is close to exceeding supply

- 6 The number of places available in hotels for managed isolation/quarantine is currently constrained. While work is underway to expand capacity, we have been experiencing high demand for the available places, and demand is close to outstripping supply in the short term.
- 7 Currently, the flow into and demand for managed isolation/quarantine is being driven by returning New Zealanders (and others exempt from border restrictions), the exceptions granted to border restrictions (under humanitarian and critical worker categories), and the availability of flights, which is set to increase (e.g. Emirates will commence three flights a week from Dubai from early July).
- 8 As at 21 June 2020, there have been approximately 57,000 commercial arrivals in New Zealand since the border closed to foreign nationals on 20 March 2020. The majority of arrivals are New Zealand citizens or residents, but there is also pressure on managed isolation/quarantine facilities from Australian citizens and permanent residents and foreign nationals who have met the high bar for exemptions from the border restrictions. In the week of 15-21 June 2020:
 - 8.1 84 percent of arrivals were New Zealand citizens or residents;
 - 8.2 three percent were Australian citizens or permanent residents; and
 - 8.3 13 percent were foreign national temporary visa holders.
- 9 Although the numbers of foreign nationals arriving at the border is still relatively low, as the economy moves further into recovery we can expect these numbers to grow.

Officials are working at pace to develop a booking system for available managed isolation/quarantine places

- 10 MIQ officials are working on developing a forward booking system as a short-to medium-term approach to demand management. However, on its own, the booking system will not be enough to manage the inward flow, as people would still be able to travel to New Zealand without having booked a place.

Officials are preparing advice on whether a booking requirement should be placed on New Zealand citizens and residents

- 11 Officials are currently preparing advice on whether New Zealand citizens and residents should be required to have a confirmed booking in a managed isolation/quarantine facilities in order to be granted entry into New Zealand.
- 12 One possible option being explored for implementing a managed isolation/quarantine booking requirement for both New Zealand citizens and residents is using an Aviation Rule. The Minister of Transport is considering

this option on advice from officials. New Zealand Bill of Rights Act issues mean this will be a careful balance to strike.

- 13 Given the uncertainty of the ability to use the Aviation Rule at this time, I propose taking steps now to require foreign nationals to have a booking in managed isolation/quarantine using the established basis of the provisions under the Immigration Act 2009.

I propose requiring foreign nationals to have a confirmed booking in order to be granted entry into New Zealand

- 14 To help manage the flow into and demand for managed isolation/quarantine, I propose introducing a new requirement for foreign nationals to have a confirmed booking in a managed isolation/quarantine facility in order to be granted entry into New Zealand. Although the majority of demand for places in managed isolation/quarantine is from New Zealand citizens or residents, anything that can be done to manage inward flow and demand will help.
- 15 Foreign nationals travelling to New Zealand will be required to confirm a place in a managed isolation/quarantine facility before they can travel and be granted entry into New Zealand unless they are specifically identified as being an exception (eg diplomatic staff).
- 16 Taking this approach to travel and entry into New Zealand is based on a reasonable and genuine capacity-related travel constraint, similar to the constraint that can apply to booking flights (i.e. an individual cannot travel to New Zealand if there are no seats available).
- 17 The Immigration Act 2009 enables entry requirements to be specified via Immigration Instructions that the Minister of Immigration certifies. Once Immigration Instructions are in place to implement the agreed change, the new requirement will be able to be applied to those who *already have been approved* an exemption to the border restrictions but have not yet travelled to New Zealand, as well as to any further foreign nationals that are granted an exemption to travel to New Zealand.
- 18 I also propose that the change to entry criteria should be bolstered by a change in information requirements on carriers. The new requirement would oblige them to ask a traveller for details of their confirmed place before they board a passenger, with boarding being denied if they did not. If an individual is boarded when they should not have been, then the individual may be liable to be turned around and returned to their place of embarkation (noting that there may be practical difficulties in doing so while flight availability is limited; and if in fact managed isolation/quarantine spaces are available when they land, then turn around would not necessarily be the best option).

There are options as to which foreign nationals this requirement would apply to

Option 1: All foreign nationals

- 19 This option would introduce the requirement to book a place in managed isolation/quarantine for all foreign nationals, unless excluded from the requirement to isolate/quarantine under the COVID-19 Public Health Response (Air Border) Order. This would include the family of New Zealand citizens and residents, Australian citizens and permanent residents ordinarily resident in New Zealand, and foreign nationals who have been granted an exception to the border restrictions (e.g. under exceptional humanitarian circumstances, or as critical workers).
- 20 This option would be easy to implement and would be the most effective at managing flow into and demand for managed isolation/quarantine for the greatest number of travellers as enabled under immigration settings.
- 21 However, the Ministry of Foreign Affairs and Trade (MFAT) advise that this option may be inconsistent with the agreement between the Australian and New Zealand Prime Ministers made at the start of the pandemic to treat one another's citizens normally resident in the other country in the same way as that country's own citizens, as New Zealanders would not have to book a place in managed isolation/quarantine, but Australians normally resident in New Zealand would.

Option 2: All foreign nationals except for those who are not subject to the border restrictions

- 22 This option would introduce the requirement to book a place in managed isolation/quarantine only for foreign nationals who are required to apply for a case-by-case exception to the border restrictions, and are not excluded from the requirement to isolate/quarantine under the COVID-19 Public Health Response (Air Border) Order.
- 23 Under this option, foreign nationals who are not subject to the border restrictions, including the family of New Zealand citizens and residents, and Australian citizens and permanent residents ordinarily resident in New Zealand, would be treated the same as New Zealand citizens and residents (as they are for the purposes of the border restrictions), and would not be required to book a place in managed isolation in order to enter New Zealand.
- 24 MFAT advise that excluding Australian citizens and permanent residents normally resident in New Zealand is consistent with the agreement between the Australian and New Zealand Prime Ministers to treat one another's citizens normally resident in the other country in the same way as that country's own citizens. MFAT consider that the Prime Minister's agreement is reflected in the inclusion of this group of Australians in the category of people allowed by right into New Zealand alongside New Zealand citizens and permanent residents, rather than by exemption like other nationalities.

- 25 However, this option would be less effective at managing flow into and demand for managed isolation/quarantine. In the week of 15-21 June 2020, about 20 percent of foreign nationals arriving in New Zealand were Australian citizens or permanent residents.
- 26 If we choose this option, the introduction of a booking requirements for the family of New Zealand citizens and residents, and Australian citizens and permanent residents ordinarily resident in New Zealand, could be considered as part of the work being undertaken on whether an Aviation Rule is should be used to introduce a booking requirement for New Zealander citizens and residents (see paragraph 12).

Other options have been considered and discounted

- 27 Officials considered whether it would be possible to include a managed isolation/quarantine booking as a requirement for granting an exception to border restrictions, but have advised that this would not be effective, as the border exceptions stage of the process is the least accurate gauge of the timing of incoming demand (exemptions are often granted before travel times are planned).
- 28 Officials also considered managing inward flows and demand by pausing the making of exception decisions for foreign nationals. However, this would complicate and further burden the exceptions process and could create legal risks. It also would not work very quickly or well, as there are large numbers of people already exempt who are yet to travel.

Implementation

- 29 Following Cabinet agreement to these recommendations, officials will undertake detailed work on implementation and prepare the required changes to entry requirements in Immigration Instructions for my certification. This will ensure that the system is ready to go as soon as the managed isolation/quarantine system is developed, ready to take bookings and has confirmed how places will be allocated.
- 30 Due to forecasted demand across all travelling groups (i.e. New Zealand citizens and residents, as well as foreign nationals), officials are hoping to have the booking system in place within the next few weeks.
- 31 If you agree to the proposed approach I will sign amended Immigration Instructions to give effect to your decision. I will also report back to Cabinet seeking agreement to the required amendments to regulations relating to information obligations on carriers.

Financial Implications

- 32 The proposals in this paper do not have any financial implications.

Legislative Implications

- 33 The proposal for a change in information requirements on carriers, which would oblige them to ask a traveller whether they have a confirmed place before they board a passenger, with boarding being denied if they did not, will require an amendment to the Immigration (Carriers' Information Obligations) Regulations 2010. The Parliamentary Counsel Office has been informed of the proposal.

Impact Analysis

Regulatory Impact Statement

- 34 The Treasury has been informed of the proposal and has not yet had the opportunity to provide a determination that this proposal is a direct COVID-19 response so that the RIA requirements can be suspended in accordance with Cabinet decision [CAB-20-MIN-0138].

Population Implications

- 35 Requiring foreign nationals arriving in New Zealand to have a booked place in managed isolation will contribute to managing the risks of COVID-19 transmission to vulnerable populations. Vulnerable populations include the elderly, Māori, Pacifica, and ethnic communities as well as groups are more at risk of severe illness from COVID-19 due to age or underlying health conditions.

Human Rights

- 36 The proposals in this paper are consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993, and with New Zealand's international commitments to enabling the movement of people.

Consultation

- 37 The Ministry of Foreign Affairs and Trade and the Treasury have been consulted on the proposals in this paper. The Department of the Prime Minister and Cabinet has been informed.
- 38 Due to the short timeframe for developing the proposals in this paper, it was not possible to undertake wider consultation.

Communications

- 39 Implementation of the new border entry criteria and carrier obligations will include clear and proactive communications to affected travellers, carriers and border staff to ensure that all are aware of the new requirements and that check in processes are smooth at airports. Discussions are already underway with airports and carriers and they are confident that the necessary systems can be developed to support our need for better flow management at the border.

- 40 I propose that we announce these decisions when the booking system is ready so that travellers can immediately be supported to seek a place in managed isolation and can confirm their travel plans. This will enable to signal well in advance whether there will be any delays in being able to secure a confirmed place. In particular, providing families and businesses awaiting incoming travellers with some certainty around travel windows will be very important.

Proactive Release

- 41 MBIE will proactively publish this paper on its website at www.mbie.govt.nz/document-library. Any redactions made will be consistent with the Official Information Act 1982.

Recommendations

The Minister of Immigration recommends that the Committee:

- 1 Note that the COVID-19 Public Health Response (Air Border) Order 2020 requires all persons entering New Zealand by air to complete at least 14 days of quarantine or managed isolation unless they are “excluded arrivals”;
- 2 Note that work is underway to implement a robust booking system for managed isolation to ensure that all individuals, who are not “excluded arrivals”, travelling to New Zealand by air have a confirmed place in a managed isolation facility upon their arrival;
- 3 Note that requiring New Zealand citizens and residents to have a confirmed place in a managed isolation facility prior to travel would be complex and may raise issues under the New Zealand Bill of Rights Act, but that it would be relatively straightforward to impose this requirement on foreign nationals;
- 4 Agree that new criteria be added to border entry that require:

EITHER

- 4.1 all foreign nationals except those that hold a New Zealand residence class visa (other than first time resident visa holders who have not yet entered New Zealand) to have a confirmed booking in a managed isolation/quarantine facility, unless they are excluded from this requirement under the COVID-19 Public Health Response Act (Air Border) Order, before entry into New Zealand can be granted;

OR

- 4.2 all foreign nationals, except Australian citizens and permanent residents normally resident in New Zealand and the foreign partners and dependent children of New Zealand citizens and residents, to have a confirmed booking in a managed isolation/quarantine facility, unless they are excluded from this requirement under the COVID-19 Public Health Response Act (Air Border) Order, before entry into New Zealand can be granted;

IN CONFIDENCE

- 5 Agree to require carriers to provide the Ministry of Business, Innovation and Employment with information about every person who intends to board a craft who has does not hold a confirmed place in a managed isolation/quarantine facility, unless they are excluded from this requirement, before boarding that person;
- 6 Invite the Minister of Immigration to issue drafting Instructions to Parliamentary Counsel Office to amend the *Immigration (Carriers' Information Obligations) Regulations 2010* to implement recommendation 5;
- 7 Note that individuals who do not meet the new requirements will be refused boarding permission, or, if they have arrived at the New Zealand border, may be liable to be turned around and returned to their place of embarkation;
- 8 Invite the Minister of Immigration to certify immigration instructions to implement these decisions as soon as the booking system is in place and following agreement from the Minister of Housing.

Authorised for lodgement

Hon Iain Lees-Galloway

Minister of Immigration