



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	KiwiSaver (Life-shortening Congenital Conditions) Amendment Regulations 2021	Date to be published	6 April 2021

List of documents that have been proactively released		
Date	Title	Author
17 February 2021	<i>Cabinet paper – KiwiSaver (Life-shortening Congenital Conditions) Amendment Regulations 2021</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
17 February 2021	<i>DEV-21-MIN-0007</i>	<i>Cabinet Office</i>

Information redacted

NO

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Office of the Minister of Commerce and Consumer Affairs
Chair, Cabinet Economic Development Committee

KiwiSaver (Life-shortening Congenital Conditions) Amendment Regulations 2021

Proposal

- 1 I am seeking Cabinet's agreement to the list of life-shortening congenital conditions to be specified in regulations under the new life-shortening congenital condition withdrawal category in the KiwiSaver Act 2006. I am also seeking authorisation to submit the KiwiSaver (Life-shortening Congenital Conditions) Amendment Regulations 2021 to Executive Council which creates the list, and also makes a consequential amendment to the KiwiSaver annual return forms.

Relation to government priorities

- 2 Ensuring that people with life-shortening congenital conditions do not miss out on the benefits of KiwiSaver and get access to their retirement savings when they retire is important. This relates to the government commitment to deliver open, transformative and compassionate government as well as to support healthier, safer and more connected communities.

Background on regulations specifying life-shortening congenital conditions

- 3 Cabinet previously agreed to create a new withdrawal category in the KiwiSaver Act that would allow people with life-shortening congenital conditions to withdraw their savings before the lock-in date (superannuation qualification age) [DEV-19-MIN-0176 refers]. Cabinet also agreed that a set list of congenital conditions be specified through regulations as guaranteeing early withdrawal.
- 4 It is important that people with life-shortening congenital conditions are able to have a positive retirement and that their financial wellbeing in retirement is supported through KiwiSaver. The change ensures that KiwiSaver works for these New Zealanders, allowing them to reap benefits that are specific to KiwiSaver and cannot be accessed through privately run retirement savings schemes (such as the Government contribution and compulsory employer contributions).
- 5 The new early withdrawal category is now in place through the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020. Establishing a set list of conditions that qualify under the new category for withdrawal will give certainty to people with prescribed conditions about their ability to withdraw their KiwiSaver savings early. It will also provide clarity to KiwiSaver providers about the types of conditions that will typically form the basis of the majority of applications and will make the application process as simple as possible.

The process for withdrawal

- 6 Under the withdrawal category, an applicant is simply required to provide:

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- 6.1 a completed statutory declaration that the member understands that their funds are to be released to them as if they had reached the New Zealand superannuation qualification age and that after withdrawal of funds, they are no longer eligible to receive Crown contributions or compulsory employer contributions in relation to their future contributions, if any, and
- 6.2 medical evidence that the member suffers from either a listed condition, or a non-listed condition that is a congenital life-shortening condition.
- 7 Unlike the serious illness withdrawal category, the member is not required to provide evidence about, for example, the severity of their condition or their capacity to work.
- 8 The difference between listed and non-listed conditions is that with a listed condition, withdrawal is guaranteed whereas with a non-listed condition, the applicant must provide additional medical evidence that they suffer from a congenital health condition which is likely to lead to a reduced life expectancy. This alternative process is appropriate for people with rare congenital conditions that shorten their life below the age of 65.

Policy – list of life-shortening congenital conditions

- 9 I propose that four life-shortening congenital conditions be prescribed in the regulations as qualifying for withdrawal. These conditions are:
- 9.1 Down syndrome (Down's syndrome);
- 9.2 Cerebral palsy;
- 9.3 Huntington's disease (Huntington's chorea); and
- 9.4 Fetal alcohol spectrum disorder.
- 10 This list is limited to congenital conditions where it is known the condition is likely to shorten a person's life below the age of 65 and meets the statutory definition¹. The list was created based on advice from health and disability experts and medical professionals. Rare congenital conditions were not included in the list because either the condition is so rare that the sample size is too small to assess impact on life expectancy or there is not enough research on the conditions. The list will be subject to review to ensure it stays up-to-date.
- 11 The new withdrawal category and the proposed regulations are designed to be consistent with the broader purpose of KiwiSaver which is to encourage long-term savings habits and asset accumulation to increase wellbeing in retirement. As such, early withdrawals are only allowed under exceptional circumstances to maintain the integrity of the regime. Due to the complexity associated with medical conditions, it is likely that no matter where you 'draw the line', it would introduce some form of inconsistency or inequity relative to other conditions that might have been included.

¹ Under section 228(1B) of the KiwiSaver Act 2006, a life-shortening congenital condition means a condition that exists for a person from the date of their birth and is likely to reduce the life expectancy for persons in general with the condition below the New Zealand superannuation qualification age.

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However, this is mitigated by the availability of alternative withdrawal options, and since the list will be reviewed.

- 12 I seek agreement to the list of life-shortening conditions and to submit the KiwiSaver (Life-shortening Congenital Conditions) Amendment Regulations 2021 to Executive Council listing these conditions under the new withdrawal category in KiwiSaver Act 2006, amending KiwiSaver Regulations 2006.

Consequential amendment to KiwiSaver annual return forms

- 13 Section 124 of the KiwiSaver Act 2006 requires all KiwiSaver schemes to provide an annual return to the Financial Markets Authority (FMA), the form of which is prescribed in Schedule 1 of the KiwiSaver Regulations 2006.
- 14 KiwiSaver schemes are required under the regulations to provide to the FMA a breakdown of categories of expenditure for the annual return year, detailing the number of withdrawals under each withdrawal category and the total amounts. Collecting this data is important since it allows the Government to have an oversight over the efficacy of KiwiSaver, as well as knowledge about 'pressure points' with respect to people who need to make early withdrawals.
- 15 The new life-shortening congenital conditions withdrawal category needs to be added to the annual return forms for accurate data collection. This needs to be done prior to the end of the annual reporting period on 31 March 2021.
- 16 I seek authorisation to submit to Executive Council the KiwiSaver (Life-shortening Congenital Conditions) Amendment Regulations 2021 which incorporate this amendment.

Timing and 28-day rule

- 17 The KiwiSaver (Life-shortening Congenital Conditions) Amendment Regulations 2021 will come into force 28 days after notification in the New Zealand Gazette.

Compliance

- 18 The regulations comply with each of the following:
- 18.1 the principles of the Treaty of Waitangi;
 - 18.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 18.3 the principles and guidelines set out in the Privacy Act 1993;
 - 18.4 relevant international standards and obligations; and
 - 18.5 the *Legislation Guidelines* (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Human Rights

- 19 This policy seeks to positively discriminate for people with life-shortening congenital conditions so that KiwiSaver becomes a viable retirement savings vehicle for them by

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allowing them to withdraw their savings at a point that would allow them to have a positive retirement.

- 20 Creating a withdrawal category that names certain conditions as qualifying for withdrawal could have discriminatory effects upon those people that also have a life-shortening congenital condition that is not on the named list because the evidence burden may be higher under the alternative process for withdrawal. This engages the right to be free from discrimination under section 19 of the Bill of Rights Act 1990. Section 21(1)(h) of the Human Rights Act 1993 prohibits disability as a ground of discrimination.
- 21 However, the policy is seeking to provide certainty for the majority of people that will utilise this withdrawal category whilst still providing an avenue for people with other life-shortening congenital conditions to also withdraw their KiwiSaver for retirement. The list in the regulations will also be subject to review to ensure it stays up to date if other appropriate conditions for inclusion are identified. The rights of people with non-listed conditions are infringed no more than is reasonably necessary to meet the policy objectives.

Consultation

- 22 The original list of conditions was suggested in a report commissioned from two independent advisers: Dr Claire Matthews of Massey University and Donna Mitchell from IHC. In formulating their report, they undertook a range of targeted consultation with experts on health and disability and those within the KiwiSaver industry. The list was finessed through subsequent consultation with the New Zealand Medical Association (NZMA).
- 23 The following agencies and departments have been consulted: the Treasury, Inland Revenue, the Ministry of Social Development, the Department of the Prime Minister and Cabinet, the Financial Markets Authority, the Commission for Financial Capability, the Ministry of Justice and the Ministry of Health.

Financial Implications

- 24 The purpose of the proposed changes is to make KiwiSaver an appropriate retirement savings vehicle for a larger number of New Zealanders. As a result, there would likely be a small but likely negligible increase on the total amount of Government contribution made towards KiwiSaver.

Regulations Review Committee

- 25 There are no 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 conditions listed in the regulations complying with the definition of 'life-shortening congenital condition' in section 228(1B) of the KiwiSaver Act 2006.

Impact Analysis

- 27 A Regulatory Impact Assessment was prepared and submitted at the time that Cabinet considered and approved the policy to create a new withdrawal category [DEV-19-MIN-0176 refers].

Population Implications

- 28 The proposals in this paper seek to positively influence the wellbeing of people with disabilities when they retire.
- 29 The advice provided at the time the policy was developed has been informed by people with knowledge of intellectual disability, health and disability experts and a legal expert specialising in health and disability.

Publicity

- 30 I intend to issue a press release announcing the changes.

Proactive Release

- 31 I intend to release the paper proactively in whole within 30 days. The Ministry of Business, Innovation and Employment will publish a copy of this paper on its website.

Recommendations

The Minister for Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that on 26 June 2019, the Cabinet Economic Development Committee agreed that a new withdrawal category be created allowing people with life-shortening congenital conditions to withdraw their savings before the lock-in date specified in the KiwiSaver Act 2006, being the New Zealand superannuation qualification age [DEV-19-MIN-0176];
- 2 **note** that the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020 amended the KiwiSaver Act 2006 to create a new withdrawal category for people with life-shortening congenital conditions and created a regulation-making power to prescribe a list of conditions as guaranteeing early withdrawal;
- 3 **note** that section 228(1B) of the KiwiSaver Act 2006 defines life-shortening congenital conditions as a condition that exists for a person from the date of their birth and is likely to reduce the life expectancy for persons in general with the condition before the New Zealand superannuation qualification age;
- 4 **agree** that the life-shortening congenital conditions to be included in the list of conditions qualifying for early KiwiSaver withdrawal will be Down syndrome (Down's syndrome), Cerebral palsy, Huntington's disease (Huntington's chorea) and Fetal alcohol spectrum disorder;
- 5 **note** that the Minister of Commerce and Consumer Affairs is satisfied that the proposed life-shortening congenital conditions to be included in the list of conditions qualifying for early KiwiSaver withdrawal meet the statutory definition in section 228(1B) of the KiwiSaver Act 2006;
- 6 **note** that people who have a congenital life-shortening condition that is not on the

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prescribed list of conditions can apply for withdrawal under the alternative avenue available in the KiwiSaver Act 2006;

- 7 **agree** that Form 1, Table 1 and Form 2, Table 1 of Schedule 1 of the KiwiSaver Regulations 2006 be updated to include the new life-shortening congenital conditions withdrawal category;
- 8 **authorise** the submission to Executive Council of the KiwiSaver (Life-shortening Congenital Conditions) Amendment Regulations 2021 giving effect to the decisions in paragraphs 4 and 7 above;
- 9 **note** that the KiwiSaver (Life-shortening Congenital Conditions) Amendment Regulations 2021 will come into force 28 days after notification in the gazette;
- 10 **note** that the list of congenital life-shortening conditions will be periodically reviewed to ensure that it is up to date.

Authorised for lodgement

Hon Dr David Clark
Minister of Commerce and Consumer Affairs



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

KiwiSaver (Life-shortening Congenital Conditions) Amendment Regulations 2021

Portfolio **Commerce and Consumer Affairs**

On 17 February 2021, the Cabinet Economic Development Committee (DEV):

- 1 **noted** that on 26 June 2019, DEV agreed that a new withdrawal category be created allowing people with life-shortening congenital conditions to withdraw their savings before the lock-in date specified in the KiwiSaver Act 2006, being the New Zealand superannuation qualification age [DEV-19-MIN-0176];
- 2 **noted** that the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020 amended the KiwiSaver Act 2006 to create a new withdrawal category for people with life-shortening congenital conditions, and created a regulation-making power to prescribe a list of conditions as guaranteeing early withdrawal;
- 3 **noted** that section 228(1B) of the KiwiSaver Act 2006 defines life-shortening congenital conditions as a condition that exists for a person from the date of their birth and is likely to reduce the life expectancy for persons in general with the condition before the New Zealand superannuation qualification age;
- 4 **agreed** that the life-shortening congenital conditions to be included in the list of conditions qualifying for early KiwiSaver withdrawal be:
 - 4.1 Down syndrome (Down's syndrome);
 - 4.2 cerebral palsy;
 - 4.3 Huntington's disease (Huntington's chorea);
 - 4.4 fetal alcohol spectrum disorder;
- 5 **noted** that the Minister of Commerce and Consumer Affairs is satisfied that the proposed life-shortening congenital conditions to be included in the list of conditions qualifying for early KiwiSaver withdrawal meet the statutory definition in section 228(1B) of the KiwiSaver Act 2006;
- 6 **noted** that people who have a congenital life-shortening condition that is not on the prescribed list of conditions can apply for withdrawal under the alternative avenue available in the KiwiSaver Act 2006;

- 7 **agreed** that Form 1, Table 1 and Form 2, Table 1 of Schedule 1 of the KiwiSaver Regulations 2006 be updated to include the new life-shortening congenital conditions withdrawal category;
- 8 **authorised** the submission to the Executive Council of the KiwiSaver (Life-shortening Congenital Conditions) Amendment Regulations 2021 [PCO 23373/4.0], which give effect to the decisions in paragraphs 4 and 7 above;
- 9 **noted** that the KiwiSaver (Life-shortening Congenital Conditions) Amendment Regulations 2021 will come into force 28 days after notification in the Gazette;
- 10 **noted** that the list of congenital life-shortening conditions will be reviewed after 18 months and thereafter at least once every five years to ensure that it is up to date.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon Carmel Sepuloni
Hon David Parker
Hon Nanaia Mahuta
Hon Poto Williams
Hon Damien O'Connor
Hon Stuart Nash
Hon Kris Faafoi
Hon Willie Jackson
Hon Michael Wood
Hon Dr David Clark
Hon Dr Ayesha Verrall
Hon Meka Whaitiri
Hon Phil Twyford
Rino Tirikatene, MP
Deborah Russell, MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

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