



COVERSHEET

Minister	Hon Chris Hipkins	Portfolio	COVID-19 Response
Title of Cabinet paper	Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020	Date to be published	21 April 2022

List of documents that have been proactively released		
Date	Title	Author
February 2022	Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020	Office of the Minister for COVID-19 Response
10 February 2022	LEG-22-MIN-0001 Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020	Cabinet Office
Information redacted NO		
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In Confidence

Office of the Minister for COVID-19 Response
Cabinet Business Committee

Amendments to the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020

COVID-19 Public Health Response Amendment Act 2021 Commencement Order 2022

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 2022, and the COVID-19 Public Health Response Amendment Act 2021 Commencement Order 2022.

Policy

- 2 The COVID-19 Public Health Response Amendment Act (No 2) 2021 (the Amendment Act) received Royal Assent on 20 November 2021.
- 3 The Amendment Act includes one still to be enacted section (s 18) relating to Managed Isolation and Quarantine (MIQ) charges, which does the following:
 - 3.1 reverses the starting point for MIQ charges, meaning everyone who enters MIQ is liable to pay fees by default, unless they are exempt in the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Regulations 2020 (the Regulations);¹
 - 3.2 shifts the MIQ fees exemptions for diplomats and their families from the Act into the Regulations so all exemptions can be found in one place.
- 4 Section 18 only comes into force on a date appointed by the Governor-General by Order in Council, to align with the introduction of Amendment Regulations consistent with the new fee liability starting point.
- 5 On 15 September 2021, Cabinet agreed to amend the Regulations to give effect to the changes in the Amendment Act [CBC-21-MIN-0104]. The proposed Amendment Regulations seek to make the following changes:

¹ Prior to this change, for MIQ charges to be payable, a person had to fall into one of the categories set in the Regulations. If they were not a person described in the Regulations, then they were not liable for fees. This change will reduce the need to update the Regulations each time the settings of our border change and allow new groups into the country.

Maintaining existing fees settings for New Zealanders when the liability starting point is reversed

- 6 Under current settings, New Zealanders² who last left New Zealand before 11 August 2020 and who are staying for more than 180 days are not liable for MIQ fees.
- 7 The Amendment Act reverses the starting point for fee liability so that everyone who enters MIQ is liable, unless they are specifically exempt in the Regulations.
- 8 To ensure that current fee liability settings for New Zealanders are maintained when the liability starting point is reversed, the Amendment Regulations add New Zealand citizens and residents who left New Zealand before 11 August 2020 and who are visiting for more than 180 days, to the list of groups who are exempt from MIQ charges

Shifting the exemption for diplomats and their families from the Act to the Regulations

- 9 When consulted on the Amendment Act, the Legislation Design and Advisory Committee (LDAC) recommended that exemptions from MIQ charges should all sit in one place to support clarity and transparency of the law.
- 10 On this basis, the Amendment Act removes the current fees exemption for diplomats and their families from the COVID-19 Public Health Response Act 2020 and the Amendment Regulations add these exemptions to the list of groups who are exempt from MIQ charges in the Regulations.

Minor and technical changes

- 11 During the drafting process, the Parliamentary Counsel Office (PCO) identified a minor issue with the drafting of an existing provision in the Regulations, which seeks to ensure that exemptions from MIQ fees for certain New Zealanders continue to apply in the context of quarantine-free travel (QFT) [CAB-21-MIN-0016].

Timing and 28-day rule

- 12 A waiver of the 28-day rule is sought so the Amendment Regulations and Commencement Order can come into force on 17 February 2022.
- 13 As the border begins to open, we need to ensure that our fees settings apply (with appropriate exemptions) to everyone, including visa classes not envisaged when the regime was introduced in August 2020. Waiving the 28-day rule will ensure that the new liability starting point is in place before the border reopening gains traction.

² New Zealand citizens, New Zealand residence class visa holders, and Australian citizens and permanent residents who are ordinarily resident in New Zealand.

- 14 I also view the waiver as justified given that the reversal of the starting point for fee liability is a technical change that will not have any material effect on current liability settings. Reversing the liability starting point does not change who is currently liable to pay for MIQ or how much is charged.
- 15 The indicative timeframe for the changes proposed in this paper coming into force are outlined in the table below:

Milestone/Activity	Timeframe
LEG paper and Regulations lodged	3 February 2022
LEG paper considered by LEG	10 February 2022
LEG paper considered by Cabinet and Executive Council	14 February 2022
Gazette Regulations	17 February 2022
Amended Regulations come into force	17 February 2022

Compliance

- 16 The Amendment Regulations comply with each of the following:
- 16.1 the principles of the Treaty of Waitangi;
 - 16.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (NZBORA) or the Human Rights Act 1993;
 - 16.3 the principles and guidelines set out in the Privacy Act 2020;
 - 16.4 relevant international standards and obligations;
 - 16.5 the Legislation Guidelines (2018 edition), which are maintained by LDAC.
- 17 The proposed changes are technical in nature and do not increase the groups liable for MIQ charges, or the amount they are required to pay.
- 18 Rather, the Amendment Regulations seek to ensure that current fee liability settings for New Zealanders and diplomats (which have been previously assessed as compliant with the Treaty of Waitangi, NZBORA, the Human Rights Act 1993, the Privacy Act 2020, and relevant international standards and obligations) are maintained when s 18 of the Amendment Act comes into force.

Regulations Review Committee

- 19 As noted above, the amendments are technical in nature, and will not make anyone who is not already liable, liable for fees. For this reason, there is unlikely to be 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

- 20 The draft regulations were certified by PCO as being in order for submission to Cabinet, subject to the following:
- 20.1 The statutory prerequisites relating to regulations in the COVID-19 Public Health Response Act 2020 are met; and
 - 20.2 The granting of a waiver of the 28-day rule to allow the regulations to come into force on 17 February 2022.

Impact Analysis

Regulatory Impact Statement

- 21 Treasury's Regulatory Impact Analysis Team has determined that the proposals in this Cabinet paper are exempt from the requirement to provide a Regulatory Impact Statement. The proposal to exempt MIQ charges for New Zealand citizens and residents who left New Zealand before 11 August 2020 and who are visiting for more than 180 days is exempt on the grounds that substantive issues have been addressed by existing impact analysis [SWC-21-MIN-0067 refers]. The proposal to move the fee exemption for diplomats from the COVID-19 Public Health Response Act to the Regulations is exempt on the grounds that it has no or only minor impacts for businesses, individuals and not-for-profit entities.

Publicity

- 22 No communications are planned as the amendments are minor and technical in nature.

Proactive release

- 23 I intend to proactively release this Cabinet paper, excluding legally privileged material and subject to any redactions consistent with the Official Information Act 1982.

Consultation

- 24 The following Government agencies were consulted: the Department of the Prime Minister and Cabinet, the Ministry of Health, Te Puni Kōkiri, the Ministry for Primary Industries, the Ministry for Pacific Peoples, the Ministry of Foreign Affairs and Trade, the Ministry of Transport, the Ministry of Justice, and The Treasury.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that on 15 September 2021, the Cabinet Business Committee [CBC-21-MIN-0104 refers]:
 - 1.1 agreed to amend the Regulations so that New Zealand citizens and residents who left New Zealand before 11 August 2020 and who are visiting for more than 180 days are added to the list of groups who are exempt from MIQ charges, so that current fee liability settings are maintained when the liability starting point is reversed (so that people are liable for MIQ charges unless exempt) as part of the of the changes proposed in the COVID-19 Public Health Response Amendment Bill;
 - 1.2 noted that, in order to ensure that the current charges liability settings for foreign diplomats and their families are maintained after the exemption from MIQ fees for diplomats is removed from the COVID-19 Public Health Response Act 2020 as part of the COVID-19 Public Health Response Amendment Bill, the Regulations will need to be amended to include this exemption.
- 2 **note** that the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2022 will give effect to the decisions referred to in recommendation 1 above;
- 3 **note** that the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2022 also address a minor issue with the drafting of an existing provision in the Regulations, which seeks to ensure that exemptions from MIQ fees for certain New Zealanders continue to apply in the context of quarantine-free travel.
- 4 **authorise** the submission to the Executive Council of the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2022 and the COVID-19 Public Health Response Amendment Act 2021 Commencement Order 2022;

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- 5 **note** that a waiver of the 28-day rule is sought:
- 5.1 so that the Regulations and Commencement Order can come into force as soon as possible;
 - 5.2 on the grounds that as the border begins to open, we need to ensure that our fees settings apply (with appropriate exemptions) to everyone, including visa classes not envisaged when the regime was introduced in August 2020. The new liability starting point needs to be in place before the border reopening gains traction;
 - 5.3 on the grounds that these are technical changes that will not alter who is currently liable to pay for MIQ or how much is charged.
- 6 **agree** to waive the 28-day rule so that the COVID-19 Public Health Response (Managed Isolation and Quarantine Charges) Amendment Regulations 2022 and the COVID-19 Public Health Response Amendment Act 2021 Commencement Order 2022 come into force on 17 February 2022;
- 7 **note** that sections 32B and 32C of the of the COVID-19 Public Health Response Act 2020 require that, before making regulations which set charges for MIQ, the responsible Minister must be satisfied of the following matters:
- 7.1 The charges concerned relate to managed isolation or quarantine facility (MIQF) costs (including direct and indirect costs); and
 - 7.2 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); and
 - 7.3 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
 - 7.4 The prescribed charges do not limit or are justified limits on the rights and freedoms in the New Zealand Bill of Rights Act 1990.
- 8 **note** the advice of the Minister for COVID-19 Response, that the requirements in recommendation 6 have been met.

Authorised for lodgement

Hon Chris Hipkins
Minister for COVID-19 Response

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