



Briefing Note: LEG paper: Education (Export Education Levy) Regulations 2011 Revocation Order 2021

To:	Hon Chris Hipkins, Minister of Education		
Cc:			
Date:	4 November 2021	Priority:	Medium
Security Level:	In Confidence	METIS No:	1275901
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Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

This paper provides a cabinet paper (attached) that seeks Cabinet Legislative Committee's authorisation for submission to the Executive Council of the Education (Export Education Levy) Regulations 2011 Revocation Order 2021.

Recommendations

- a **note** the attached Cabinet paper "*Education (Export Education Levy) Regulations 2011 Revocation Order 2021*" gives effect to Cabinet's decision to suspend the Export Education Levy (EEL) by revoking the regulations until future regulations are made.
- b **agree** to commence ministerial consultation on the cabinet paper.
- c **note** we have provided you with talking points should you wish to make an announcement.

Agree / Disagree.

- d **agree** that this Briefing will be proactively released once relevant cabinet decisions have been made, as per your expectation that information be released as soon as possible. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

☒ Agree / ☐ Disagree.



Belinda Himiona
Group Manager, International Division

04/11/2021



Hon Chris Hipkins
Minister of Education

9 / 11 / 2021

Giving effect to the policy decision

1. On 6 October 2021, the Cabinet Business Committee agreed to remove the obligation to pay the Export Education Levy (EEL) for the 2022 calendar year (CBC-21-MIN-0109).
2. We considered several ways to give effect to CBC's decision. We consider revoking the principal regulation is the clearest and most legally sound option. It clearly communicates that there is currently no levy and allows you to make new regulations to impose a levy for 2023 (or some other date) following the review of the EEL currently underway (the Revocation Order is attached as Annex 2).
3. We have explored the following alternative options:
 - a. *Amending the regulations to suspend the levy payable for 2022.* On further investigation there is a risk that this option is ultra vires. The PCO interpretation is that suspending a levy does not align with the powers of the Act which is only to impose or revoke a levy.
 - b. *Amending the regulations to set a 0% levy.* Setting a nil levy may not align with the powers of the Act which is to impose a levy. This option may attract attention of Regulations Review Committee.
 - c. *Making new regulations with a transitional provision specifying that no levy is payable before 1 January 2023.* This option relies on s641(2)(b) of the Act allowing regulations to "prescribe when the levy, or any part of the levy, is payable". While it may more clearly communicate that the levy is intended to come into force in 2023, transitional provisions are not usually used to suspend a regulation otherwise identical to a regulation previously in force.
4. In summary, while alternative option c has some merit, making regulations next year reduces the risk of having to revoke and make new regulations in response to future uncertainty around the border and/or in response to the EEL review. There is also a chance that the payment rate may need to change to balance costs with the size of the sector.
5. The Cabinet paper (attached as Annex 1) also draws the committee's attention to section 641(3) of the Act which requires the Minister to consult with signatory providers before making a recommendation to impose a levy. Signatory providers were consulted on the suspension decision.

Next Steps

6. In order for Cabinet to make decisions and leave time for implementation we propose:
 - a. beginning ministerial consultation when possible from 8 November 2021
 - b. lodging the final paper on 11 November 2021 for the Cabinet Legislation Committee of 18 November 2021
 - c. as an alternative the paper can be considered at the LEG committee of 25 November, this is the last option to gazette and meet the 28 day rule before the order comes into force.
7. We have provided you with talking points (attached as Annex 3) should you wish to make an announcement following Cabinet confirmation. We will then arrange for the revocation order to be published in the Gazette.

Annexes

- Annex 1: Cabinet Paper: Education (Export Education Levy) Regulations 2011
Revocation Order 2021
- Annex 2: Education (Export Education Levy) Regulations 2011 Revocation Order 2021
- Annex 3: Talking points

Proactively Released