

In confidence

Office of the Minister of Immigration

Chair, Cabinet

Immigration amendment regulations

Proposal

1. I propose that Cabinet authorise the submission of the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2020* (the Visa Regulations) and the *Immigration (Carriers' Information Obligations) Amendment Regulations (No 2) 2020* (the Information Regulations) to the Executive Council.
2. The Visa Regulations will enable Immigration New Zealand (INZ) to better manage certain travellers, while the Information Regulations make two minor changes to the powers enabled through the *Immigration (Carriers' Information Obligations) Amendment Regulations 2020*.

Policy

3. The two sets of Amendment Regulations give effect to policy decisions made by the Ad Hoc Cabinet Committee on COVID-19 Response on 1 March 2020 [CVD-20-MIN-0006]. The Visa Regulations amend the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* (the **first principal regulations**) and the Information Regulations amend the *Immigration (Carriers' Information Obligations) Regulations 2010* (the **second principal regulations**).

Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2020

4. The Visa Regulations will enable INZ to require cruise passengers and crew, where appropriate, to apply for entry permission and a visa on arrival. Such travellers are usually visa waiver to travel to New Zealand (in most cases because they hold an Electronic Travel Authority (ETA) enabling them to travel by cruise vessel), and deemed to hold a visa and entry permission on arrival at the internal waters of New Zealand. Policy work undertaken in response to COVID-19 has established that there are circumstances in which it is appropriate to be able to make individual decisions to grant or refuse entry permission and a visa.
5. Accordingly, the Visa Regulations amend:
 - 5.1. Schedule 3 of the first principal regulations (which describe people who are deemed to hold a visa and to have been granted entry permission to New Zealand), through providing that the deemed entry permission and visa only applies to passengers and crew on board a cruise ship that has been granted pratique under the Health Act 1956. (Pratique is permission granted to a ship to berth at a wharf or other landing place, and is given when the relevant medical officer of health or health protection officer is satisfied that no quarantinable disease exists on board.)
 - 5.2. regulation 34 of the first principal regulations (which establishes regulation requirements that the Minister may waive), through giving the Minister of Immigration the power to issue a special direction extending the time by which a person who has not been granted a visa or entry permission, and who arrives at New Zealand at a place other than an immigration control area, must report to an immigration officer at an immigration control area. (The time limit

established in regulation 29 is within 72 hours, but that period may sometimes need to be extended, for example if a ship has arrived in New Zealand waters but is liable for quarantine.)

6. The Visa Regulations also clarify, through an amendment to regulation 23N, that if the Minister has suspended a waiver of the requirement to hold a visa to travel to New Zealand in respect of a person, then that person's ETA ceases to be valid.
7. Ministers agreed [CVD-20-MIN-0006] to a waiver of the 28-day rule in respect of these amendments.

Immigration (Carriers' Information Obligations) Amendment Regulations 2020

8. The Information Regulations amend the second principal regulations. The second principal regulations specify information that carriers, and persons in charge of a commercial craft (mainly airlines) are required to provide to the chief executive of the Ministry of Business, Innovation, and Employment about persons who intend to travel to and from New Zealand on the craft.
9. The *Immigration (Carriers' Information Obligations) Amendment Regulations 2020*, amended the second principal regulations in February 2020, through adding a new requirement to provide information about persons who intend to travel to New Zealand and who have been in places of concern with respect to the risk of spread of the novel coronavirus (2019-nCoV) within 14 days of checking in. That new requirement was added to the second principal regulations for a limited time only, until 30 April 2020.
10. The two changes made by these regulations are:
 - 10.1. a technical update to ensure the regulations use the official name that has been announced by the World Health Organisation for the virus; and
 - 10.2. an extension of the period during which the requirement to provide information about persons travelling to New Zealand from places of concern applies, to 30 September 2020.

Timing and 28-day rule

11. I recommended to the Ad Hoc Cabinet Committee on COVID-19 Response that they agree to a waiver of the 28-day rule for the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2020* to enable them to come into effect on Wednesday 18 March 2020. I therefore propose that Cabinet recommend a waiver of the 28-day rule to Executive Council, on the basis that the regulations are made to address an immediate risk, and will confer benefits on the public.
12. A waiver is not sought with regard to the Information Regulations, which are planned to come into force on 15 April 2020. This will enable sufficient time to advise carriers, whose current obligations expire on 30 April 2020.

Compliance

13. The *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2020* and the *Immigration (Carriers' Information Obligations) Regulations 2010* comply with each of the following:
 - 13.1. the principles of the *Treaty of Waitangi*;
 - 13.2. the rights and freedoms contained in the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act*;
 - 13.3. the disclosure statement requirements;

- 13.4. the principles and guidelines set out in the *Privacy Act 1993*;
- 13.5. relevant international standards and obligations; and
- 13.6. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 14. There are no anticipated grounds for the Regulations Review Committee to draw either of the Amendment Regulations to the attention of the House under Standing Order 315.

Consultation

- 15. The time available to prepare the policy paper meant that it was not possible to undertake the usual consultation processes. The Ministries of Health and Transport, the New Zealand Customs Service and the Department of the Prime Minister and Cabinet were informed of the proposals and their views taken into account as practicable.

Certification by Parliamentary Counsel

- 16. The *Immigration (Carriers' Information Obligations) Amendment Regulations 2020* have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet. The Parliamentary Counsel Office has certified the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2020* as being in order for submission, subject to a waiver of the 28 day rule.

Impact analysis

- 17. Given the time available, officials were not able to complete a full analysis of the impacts of the regulatory proposals. Two of the changes (clarifying that suspending a person's visa waiver status before they travel to New Zealand invalidates their ETA, and extending the expiry date of the carrier information obligation) are minor and machinery in nature.
- 18. The change which will make it possible to require cruise ship passengers and cruise ship crew to apply for entry permission and a visa on arrival at a port would impose costs on:
 - 18.1. passengers and crew (who would have to fill out arrival cards)
 - 18.2. cruise vessel management (which would likely have to coordinate the distribution of the cards and provide advice to travellers) and
 - 18.3. border agencies (which would need to capture the information on the cards and which would incur costs associated with the physical processing of large numbers of applications for entry permission and visas).
- 19. However, these costs would only be incurred in the context where the new regulations would be used - the management of a suspected quarantinable disease - and would reduce potential later costs to INZ and wider government agencies (such as the Ministry of Health) related to managing non-New Zealand citizens.

Publicity

- 20. These decisions will be announced in the context of broader COVID-19 management messaging. Advice to stakeholders, including port operators and cruise carriers, will be important, especially at the point that a cruise vessel in particular is suspected of

having or confirmed to have COVID-19 on board and quarantine requirements are being imposed.

Proactive Release

21. The Ministry of Business, Innovation and Employment will proactively publish this paper. Any redactions made will be consistent with the Official Information Act 1982.

Recommendations

I recommend that Cabinet:

1. **note** that on 11 March 2020, the Ad Hoc Cabinet Committee on COVID-19 Response agreed to change:
 - 1.1. the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* to:
 - 1.1.1. make it possible to require cruise passengers and cruise ship crew to apply for entry permission and a visa on arrival at a port; and
 - 1.1.2. clarify that an Electronic Travel Authority ceases to be valid where a person has had their visa waiver status suspended because they are no longer a person to whom visa waiver to travel to New Zealand applies; and
 - 1.2. the *Immigration (Carriers' Information Obligations) Amendment Regulations 2020* to extend the date of revocation for the requirement in regulation 4 subclause (5) to 30 September 2020 [CVD-20-MIN-0006];
2. **note** that the *Immigration (Visa, Entry Permission and Related Matters) Amendment Regulations 2020* will give effect to the decision referred to in paragraph 1.1 above, and the *Immigration (Carriers' Information Obligations) Amendment Regulations (No 2) 2020* will give effect to the decision referred to in paragraph 1.2 above,
3. **note** that the *Immigration (Carriers' Information Obligations) Amendment Regulations (No 2) 2020* also include a technical update, to ensure the regulations use the official name that has been announced by the World Health Organisation for the virus;
4. **note** that the Ad Hoc Cabinet Committee on COVID-19 Response has agreed to a waiver of the 28-day rule [CVD-20-MIN-0006]
5. **note** that the waiver of the 28-day rule is sought for the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2020*:
 - 5.1. so the regulations can come into force as soon as possible, on Wednesday 18 March 2020
 - 5.2. on the grounds that regulations are made to address an immediate risk, and will confer benefits on the public;
6. **agree** to waive the 28-day rule so that the *Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2020* can come into force on 18 March 2020; and
7. **authorise** the submission to Executive Council of the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* and the *Immigration (Carriers' Information Obligations) Amendment Regulations (No 2) 2020*.

Authorised for lodgement

Hon Iain Lees-Galloway
Minister of Immigration



Cabinet

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.

Immigration Amendment Regulations

Portfolio **Immigration**

On 16 March 2020, Cabinet:

- 1 **noted** that on 11 March 2020, the Ad Hoc Cabinet Committee on COVID-19 Response:
 - 1.1 agreed to amend the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to:
 - 1.1.1 make it possible to require cruise passengers and cruise ship crew to apply for entry permission and a visa; and
 - 1.1.2 clarify that an Electronic Travel Authority ceases to be valid where a person has had their visa waiver status suspended because they are no longer a person to whom visa waiver to travel to New Zealand applies;
 - 1.2 noted that on 2 February 2020, Ministers with Power to Act agreed to enable the Chief Executive of the Ministry of Business, Innovation and Employment (the Ministry) to require a carrier, and a person in charge, of a commercial craft to request specified information about a place of concern from intending travellers and to advise Immigration New Zealand of certain responses [CAB-20-MIN-0015], and that this amendment is automatically repealed on 30 April 2020;
 - 1.3 agreed to amend the Immigration (Carriers' Information Obligations) Amendment Regulations 2020 to extend the date of revocation for the requirement to 30 September 2020;
 - 1.4 agreed to a waiver of the 28-day rule for the decisions in paragraph 1.1;
[CVD-20-MIN-0006]
- 2 **noted** that the Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2020 and the Immigration (Carriers' Information Obligations) Amendment Regulations (No 2) 2020 give effect to the above decisions;
- 3 **authorised** the submission to the Executive Council of the:
 - 3.1 Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2020 [PCO 22800/7.0];
 - 3.2 Immigration (Carriers' Information Obligations) Amendment Regulations (No 2) 2020 [PCO 22801/6.0];

4 **noted** that the:

- 4.1 Immigration (Visa, Entry Permission, and Related Matters) Amendment Regulations 2020 come into force on 18 March 2020;
- 4.2 Immigration (Carriers' Information Obligations) Amendment Regulations (No 2) 2020 come into force on 15 April 2020.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister of Immigration

Proactively Released