

Temporary extension of transport documents Rule – Proposed response to Regulations Review Committee concerns

Reason for this briefing	Informs you of the Regulations Review Committee's concerns about the Land Transport Rule: COVID-19 Response (No 1) 2020, and seeks your agreement to our proposed response and way forward.
Action required	Agree to amend the Rule to provide certainty around dates for re-compliance, and to consequentially remove Waka Kotahi's role in setting dates. Agree to our proposed response to the Regulations Review Committee.
Deadline	Thursday 14 May 2020.
Reason for deadline	To meet the Committee's deadline for response (Friday 15 May 2020).

Contact for telephone discussion (if required)

Name	Position	Telephone	First Contact
Brendan Booth	Chief Legal Adviser	██████████	✓
Lucy Nie	Principal Adviser, Mobility and Safety	██████████	
Dawn Kerrison	Senior Solicitor	██████████	

MINISTER'S COMMENTS:

Privacy

Date:	12 May 2020	Briefing number:	OC200365
Attention:	Hon Phil Twyford	Security level:	In confidence

This briefing contains legal advice and may be legally privileged. Information should not be released without consultation with the Chief Legal Adviser.

Minister of Transport's office actions

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|--|--|---|
| <input type="checkbox"/> <i>Noted</i> | <input type="checkbox"/> <i>Seen</i> | <input type="checkbox"/> <i>Approved</i> |
| <input type="checkbox"/> <i>Needs change</i> | <input type="checkbox"/> <i>Referred to</i> | |
| <input type="checkbox"/> <i>Withdrawn</i> | <input type="checkbox"/> <i>Not seen by Minister</i> | <input type="checkbox"/> <i>Overtaken by events</i> |

Purpose

1. This briefing:
 - 1.1. provides a brief summary of the concerns raised by the Regulations Review Committee (the Committee) on the Land Transport Rule: COVID-19 Response (No 1) 2020 (Rule) that provided a temporary extension of expired transport documents
 - 1.2. sets out our proposed approach to addressing these concerns.
2. Our proposed response to the Committee is attached as *Appendix 2*.

Executive summary

3. On 7 April 2020, as a result of COVID-19 restrictions, the COVID-19 Ministerial Group (CVD) with Power to Act agreed to the Rule which temporarily extended some expired vehicle certification and driver licensing documents for a period of up to six months (i.e. to a 'backstop date' of 10 October 2020). Within that six month period, Waka Kotahi could set earlier statutory deadlines (cut off dates and expiry dates) for renewing expired documents. The purpose of this power was to assist in providing an orderly return to compliance.
4. The Committee has highlighted that the Rule creates uncertainty because it provides Waka Kotahi with flexibility to set dates. We agree with the Committee that it is important to provide certainty to the public, particularly as we move into lower COVID-19 Alert Levels. We acknowledge that now is the right time to provide the certainty the public, and transport operators.
5. The Committee has also expressed concerns that the Rule is an unauthorised sub-delegation of power to Waka Kotahi. We note that the Land Transport Act (LTA) empowers rules that provide for a matter to be determined by Waka Kohati. The issue is whether this power enables a rule to sub-delegate the setting of statutory deadlines to Waka Kotahi in the way provided for in this Rule. [REDACTED]
6. **Legal advice**
To address the Committee's concerns, we propose that you make amend the Rule to provide certainty around dates for re-compliance, and to consequentially remove Waka Kotahi's role in setting dates.
7. We will provide you with further advice shortly on the substance of the Rule amendment, including whether:
 - 7.1. specific transition dates should be set through this amendment to enable a staggered transition back into re-compliance; or
 - 7.2. the 'backstop date' of 10 October 2020 is the only date, but supplemented by guidance for the public, and a communications campaign, from Waka Kotahi encouraging a staggered transitional approach to the renewal of documents.
8. If you agree to our approach, we will send the attached response (*Appendix 2*) to the Committee by Friday 15 May 2020 (the deadline for response).

A Rule was introduced in April that temporarily extended some expired transport documents

9. On 7 April 2020, CVD agreed to a temporary extension of some expired transport documents through a new Rule and the Land Transport (Motor Vehicle Registration and Licensing) (COVID-19—Extension of Duration of Motor Vehicle Licences) Amendment Regulations 2020. This was in response to the driver licensing and vehicle certification issues that arose because of COVID-19 restrictions.
10. Under the Rule, Warrants of Fitness (WOF), Certificates of Fitness (COF) and driver licences that expired on or after 1 January 2020 were deemed valid on 10 April 2020 for a period of up to six months.
11. The Rule specifies that the temporary extension will apply to eligible documents for no more than six months. Within that six month period, Waka Kotahi has the ability to set deadlines for renewing expired documents, taking into consideration the status of any regional or national COVID-19 restrictions. The intent was to provide for an orderly return to compliance, reducing the likelihood of compliance bottlenecks at agencies and inspecting organisations.

The Regulations Review Committee has raised concerns about the Rule

12. On 6 May 2020, we received a letter from the Committee outlining its concerns with the Rule (*Appendix 1*). Specifically, it considers that giving Waka Kotahi the flexibility to set dates for re-compliance provides for insufficient regulatory certainty, and is an unauthorised sub-delegation of power to Waka Kotahi. The Committee therefore concluded that the Rule may be in breach of Standing Order 319(2)(a) – i.e. that it is not in accordance with the objects and intentions of the LTA.

Issue 1: Uncertainty

13. The Committee has highlighted that the Rule creates uncertainty because it provides Waka Kotahi with flexibility to set dates to bring expired documents back into compliance.
14. We acknowledge this is the case. In the Cabinet paper that recommended the making of the Rule, you signalled that there was considerable uncertainty around both the likely duration of higher levels of alert for COVID-19, and of the ability of relevant organisations to manage the transition back to compliance. For this reason, as you indicated in the Cabinet paper, the Rule allowed Waka Kotahi to set the deadlines for renewing expired documents, taking into consideration the status of any regional or national COVID-19 restrictions. The Cabinet paper noted this would provide for an orderly return to compliance, especially if parts of New Zealand remain subject to alert level (AL) 3 or 4 restrictions, and reduce the likelihood of compliance bottlenecks at agencies and inspecting organisations. Given the uncertainty, you were authorised by CVD to make amendments to the Rule without further reference to Cabinet.
15. We agree with the Committee that it is important to provide certainty to the public, particularly as we move into lower COVID-19 Alert Levels. While we do not consider the Rule is in breach of Standing Order 319(2)(a), we acknowledge that now is the right time to provide the certainty the public, and transport operators, need.

Issue 2: Sub-delegation of powers

16. 

Legal advice

17. The alternate view provided by the Committee is that the power provided in section 160(4)(a) does not extend to enabling Waka Kotahi to set dates in the way provided in the Rule. The Committee considers that section 159 of the LTA, which states that rules may provide for the issue, expiry, suspension and revocation of land transport documents, means that it was Parliament's intention for the Rule to determine the parameters and expiry dates for the documents, not Waka Kotahi. It's view is that Waka Kotahi's power is limited to "determinations in respect of individual cases".

Legal advice

18.



We propose a Rule change to provide certainty around dates, removing Waka Kotahi's delegated authority to set earlier statutory deadlines

19. To address the Committee's concerns, we propose that you expedite a Rule amendment to provide certainty around dates, removing Waka Kotahi's power to set earlier statutory deadlines. This could be done using the standard ministerial Rule-making process or by amending the Rule through Order in Council.
20. Waka Kotahi is currently assessing:
- 20.1. options for a staggered transitional approach to re-compliance
 - 20.2. the extent to which transition dates need to be prescribed (i.e. through the Rule), compared to what could be achieved through guidance for the public and a communications campaign from Waka Kotahi.
21. We note transition has also become a focus for the vehicle inspection industry, who have raised concerns about potentially lower than normal volumes of inspections in April 2021 and subsequent years, impacting on business planning. They have asked Waka Kotahi to investigate options to alleviate this issue.
22. Waka Kotahi's data indicates that 59 percent of vehicle inspections that were due under AL4 and AL3 have been completed. This indicates not only capacity becoming available, but vehicle operators and owners are continuing to complete certifications on time – even with the temporary extension in place. Under AL2, the situation is likely to continue to improve.
23. However, reliable data on agent capacity to complete driver licensing renewals is not yet available. This is primarily due to service providers being unable to carry out approximately 61,000 counter-based driver licensing transactions under AL4 and AL3. There may therefore need to be a greater focus on a transitional approach for driver licence renewals than for vehicle certifications.
24. In developing its analysis and recommendations, Waka Kotahi will consider the behaviours of vehicle owners and driver licence holders as we move into AL2. They will also review the impacts on the industry and what the inspection throughput is, once sufficient transactional data is available to model scenarios to make a more informed and data-led decision. Our next briefing to you will outline the analysis of these issues and present options in more detail.

Next steps

25. If you agree to our approach, we will send the attached response (*Appendix 2*) to the Committee. This notifies them of your intent to expedite a Rule amendment.
26. We will then provide you with further advice by 22 May 2020 on the substance of this Rule amendment, including:
- 26.1. whether specific transition dates (in addition to the current 10 October 2020 'backstop date') should be set in the Rule
- 26.2. the role of guidance for the public, and a communications campaign, from Waka Kotahi encouraging a transitional approach to the renewal of documents.


Recommendations

27. The recommendations are that you:
- (a) **agree** to make a Rule amendment to provide certainty around dates for bringing expired vehicle certification and driver licensing documents back into compliance, and to consequentially remove Waka Kotahi's role in setting dates Yes/No
- (b) **agree** to our proposed response to the Regulations Review Committee (*Appendix 2*) Yes/No
- (c) **note** we will provide you with further advice on the proposed substance of this Rule change by 22 May 2020.



Brendan Booth
Chief Legal Adviser

MINISTER'S SIGNATURE:



DATE: 14.5.2020

APPENDICES

Appendix 1: Letter from the Regulations Review Committee

Appendix 2: Ministry of Transport's response letter to the Committee