

Temporary extension of expired driver licences and vehicle certification documents during COVID-19 lockdown period

Reason for this briefing	<p>This briefing attaches a Cabinet paper seeking a temporary extension of a number of expired transport documents via a Rule and Amendment Regulations.</p> <p>It also sets out the matters that you must have regard to under section 164(2) of the Land Transport Act 1998 before recommending Her Excellency the Governor-General make the Rule.</p>
Action required	<p>Sign the attached Cabinet paper.</p> <p>Sign the advice sheets recommending that Her Excellency the Governor-General sign the proposed Rule and Amendment Regulations.</p> <p>Lodge the attached Cabinet paper, together with the proposed Rule, Amendment Regulations, and advice sheets with Cabinet Office on 6 April 2020.</p>
Deadline	6 April 2020.
Reason for deadline	To enable the Cabinet paper to be lodged on 6 April, for Cabinet COVID-19 Ministerial Group (CVD) on 7 April 2020.

Contact for telephone discussion (if required)

Withheld under section 9(2)(a) of the OIA

Name	Position	Telephone	First Contact
Brent Johnston	Manager, Mobility and Safety	██████████	✓
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Brendan Booth	Chief Legal Adviser	██████████	Legal Contact

MINISTER'S COMMENTS:

Date:	2 April 2020	Briefing number:	OC200277
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

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 Withdrawn | 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

Purpose of report

1. This briefing:
 - 1.1. provides a brief summary of the driver licensing and vehicle certification issues that have arisen as a result of COVID-19 Alert Level 4 (AL4) restrictions
 - 1.2. attaches a Cabinet paper proposing a temporary extension of a number of expired transport documents, via a Rule change and Amendment Regulations
 - 1.3. sets out the matters that you must have regard to under section 164(2) of the Land Transport Act 1998 (the Act) before recommending that the Governor-General makes the Rule by Order in Council under section 152A.

Issue – validity of expired transport documents until we return to AL2 or lower

2. In order to be able to legally drive on public roads, drivers must have a current driver licence and valid vehicle certifications including Warrants of Fitness (WoF) and Certificates of Fitness (CoF). These requirements are enforced by NZ Police and local Government parking wardens. These documents need to be renewed on a periodic basis, and a total of 1.4 million of these documents are expected to expire before 17 May 2020. There are several different offences for driving without valid documents and lack of these documents may also affect vehicle insurance claims.
3. However, during the AL3 and AL4 periods, most people will not have access to vehicle inspection facilities to carry out a WoF or CoF inspection. In addition, some smaller specialist inspection and repair facilities are reportedly not operating for personal safety reasons. In the case of vehicle and driver licences, some transactions may still be able to be completed online. However, access to the internet, or to postal services may also be limited or unavailable for many during this time.
4. People should not be unnecessarily restricted from travelling to access essential services solely because a transport document has expired. The ability to travel by private vehicle is particularly important during this time if alternative forms of transport are unavailable, or if people are unwell and need access to healthcare.

Proposed solution – temporary exemption through a Rule change and Amendment Regulations

5. We recommend confirming the Government's position on this issue through:
 - 5.1. a Rule change (for WoFs and CoFs, vehicle certifications, and driver licences and endorsements) through the Land Transport Rule: COVID-19 Response 2020
 - 5.2. Amendment Regulations (for the display of vehicle licences) through the Land Transport (Motor Vehicle Registration and Licensing) (COVID-19—Extension of Duration of Motor Vehicle Licences) Amendment Regulations 2020.
6. This would allow a temporary extension to apply to:
 - 6.1. driver licences and endorsements
 - 6.2. WoFs and CoFs
 - 6.3. other vehicle certifications issued under the Vehicle Standards Compliance Rule, including alternative fuel inspection certificates, permits authorising use of vehicles

with conditions, and heavy vehicle specialist certifications for towing connections and log bolster attachments.

7. It would also enable a temporary suspension of the requirement to display valid vehicle licences.¹
8. The following documents would be deemed valid from the date the Rule and Amendment Regulations are in force:
 - 8.1. WoFs and CoFs, vehicle certifications issued under the Vehicle Standards Compliance Rule, and driver licences that expired on or after 1 January 2020
 - 8.2. driver licence endorsements that expired on or after 1 March 2020 (recognising that endorsement holders must be fit and proper to operate and in some instances endorsements may not have been renewed due to a person's inability to meet the required threshold).
9. Waka Kotahi NZ Transport Agency (Waka Kotahi) also has the discretion under their existing powers to provide a temporary extension to documents that expired before 1 January 2020 on a case-by-case basis.
10. We propose that the temporary extension continue for no more than six months. Within that six month period, Waka Kotahi will set the deadlines for renewing expired documents, taking into consideration the status of any regional or national COVID-19 restrictions. This provides for an orderly return to compliance and reduces the likelihood of compliance bottlenecks at agencies and inspecting organisations. It also allows Waka Kotahi to target areas of specific safety concern, such as heavy vehicle inspections earlier if needed.
11. An eight month period was considered due to some concern from Waka Kotahi and industry that they may not be able to get through the backlog within six months. However, on balance we propose six months to be consistent with the temporary extensions set in other sectors. The Cabinet paper also notes that you have existing ministerial powers to amend the expiry date, without further reference to Cabinet, to address sector capacity issues if required.
12. The changes proposed would not alter the separate requirement that a vehicle must be safe to operate. Drivers will also continue to be expected to be medically fit to drive, comply with relevant restrictions on their licence and comply with all other road rules. Any licence suspensions will also continue to apply. These requirements will be enforced by the NZ Police.
13. In addition, the extension only applies to vehicles operating after the legislation comes into effect. This means it does not alter the circumstances of any previous infringements that may have been issued.

¹ New Zealand has continuous licensing, where vehicles are licensed from and to a specific date, usually annual. These dates remain constant regardless of when the fee is paid. This means, owners will still need to pay for their licence including for the period of the extension, but do not need to make this payment during the period of AL4.

The attached Cabinet paper seeks authorisation for the Rule and Amendment Regulations to be submitted to the Executive Council

14. The Ministry's Chief Legal Adviser considers that you have legal authority to recommend that the Governor-General makes the Rule, by way of Order in Council, and that it complies with the relevant requirements. The Rule is certified by the Chief Legal Advisor as being in order for submission to the Executive Council.
15. The Amendment Regulations were drafted by Parliamentary Counsel Office and have been certified as being in order for submission to Executive Council.
16. The Rule would be made pursuant to the following sections of the Act:
 - 16.1. section 152, which sets out the Minister's general rule making powers, including the power to make rules for the purposes of safety and licensing for any form of land and transport within the land transport system, including (but not limited to) technical requirements, improving access and mobility, and protecting and promoting public health
 - 16.2. section 152A, which provides that the Governor-General may, by Order in Council, on the recommendation of the Minister, make, amend, or revoke an ordinary rule for any of the purposes for which the Minister may make, amend, or revoke an ordinary rule
 - 16.3. section 154, which provides that rules can be made to provide for driver licencing, including provisions for the issue, endorsement, alteration, replacement, renewal, surrender, suspension, expiry, and revocation of licences
 - 16.4. section 158(a), which provides that rules can be made to provide for the identification, classification, registration, licensing, inspection, and audit of all vehicles
17. The Amendment Regulations would be made pursuant to section 269, which provides for the licensing and registration of motor vehicles.

In recommending the Rule, you must have regard to specific matters

18. Section 152A(2) of the Act requires you to have regard, and give such weight, as you consider appropriate in each case, to the matters in section 164(2) when deciding to recommend that a rule is made by Order in Council.
19. We have set out our advice on these matters in the table below.

Matter to be considered	Comment
<p>Section 164(2)(a) The level of risk existing to land transport safety in each proposed activity or service</p>	<p>The Rule will temporarily extend all WoFs and CoFs, driver licences and endorsements, and some vehicle certification documents. Applicable documents that expired on or after 1 Jan 2020 (and endorsements from 1 March 2020) would be deemed valid from the date the Rule is in force. This would apply for no more than six months after the rule comes into force.</p> <p>While this extension may create some additional road safety risk, we consider this risk is outweighed by the risk that some members of the public may not otherwise have access to a private vehicle, which is regarded as a critical lifeline at this time. It also enables transport service operators to maintain critical supply chain and essential services vehicles.</p> <p>Moreover, the proposed change does not remove the existing and separate legal requirements that a vehicle is safe to operate, and for drivers to be medically fit to drive, and comply with the road rules and any relevant restrictions on their licence. These requirements will continue to be enforced by NZ Police.</p>
<p>Section 164(2)(b) The nature of the particular activity or service for which the rule is being established</p>	<p>This Rule means drivers will not be unnecessarily restricted from travelling to access essential services solely because a document has expired.</p>
<p>Section 164(2)(c) The level of risk existing to land transport safety in New Zealand in general</p>	<p>As above.</p>
<p>Section 164(2)(d) The need to maintain and improve land transport safety and security, including (but not limited to) personal security</p>	<p>As above.</p>
<p>Section 164(2)(da) The appropriate management of infrastructure, including (but not limited to)—</p> <p>(i) the impact of vehicles on infrastructure; and</p> <p>(ii) whether the costs of the use of the infrastructure are greater than the economic value generated by its use</p>	<p>The Rule will have a marginal impact on the management of infrastructure relative to the broader impact of restrictions on travel when AL3 or AL4 is in place.</p>
<p>Section 164(2)(e)(i) Whether the proposed rule assists economic development</p>	<p>The Rule will have no direct impact on economic development.</p>

Matter to be considered	Comment
Section 164(2)(e)(ii) Whether the proposed rule improves access and mobility	This Rule promotes access to essential services when AL3 and AL4 restrictions are in place. Although public transport and small passenger services remain available in some areas, these do not provide an alternative travel option for people living outside of the main centres to undertake essential journeys (eg to collect groceries or obtain routine healthcare). It also enables transport service operators to maintain essential services and critical supply chain operations.
Section 164(2)(e)(iii) Whether the proposed rule protects and promotes public health	Allowing people to continue to access essential services via private vehicle can help minimise transmission of the COVID-19 virus because it enables social distancing. It is also in line with current public health guidance stating that people who are unwell or suspected of having COVID-19 and who must travel, should use private motor vehicles.
Section 164(2)(e)(iv) Whether the proposed rule ensures environmental sustainability	Allowing continued use of some vehicles with expired Wof and CoF and driver licences may increase transport greenhouse gas emissions. However, we consider that any environmental impacts are mitigated by the significant restrictions otherwise in place during AL3 and 4 on all but essential travel.
Section 164(2)(ea) The costs of implementing measures for which the rule is being proposed	There are no additional costs of implementing this Rule.
Section 164(2)(eb) New Zealand's international obligations concerning land transport safety	The Rule will have no direct impact on our international obligations for land transport safety.
Section 164(2)(f) The international circumstances in respect of land transport safety	The Rule will have no direct impact on our international circumstances in respect of land transport safety.
Section 164(2)(g) Such other matters as you consider appropriate in the circumstances	The Rule will give certainty to the public, enforcement staff and transport service operators on an issue of strong public concern. There has not been any public consultation on this draft rule. It has been discussed with representatives of the AA, and Federation of Motoring Clubs, who support its intent.

20. There are no specific matters in the Act that you need to have regard to before recommending the Amendment Regulations be made.

Legal Advice on the Regulations Review Committee

21. Under section 152A(6) of the Act, ordinary rules are disallowable instruments for the purpose of the Legislation Act 2012. Under section 41 of that Act, rules must be laid before the House of Representatives not later than the sixteenth sitting day after they are made.
22. You have not referred a draft of the Rule to the Regulations Review Committee (the Committee) under Standing Order 318(2).

Withheld
under section
9(2)(h) of the
OIA

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Next steps

Cabinet lodgement by 6 April 2020

27. The Rule and Amendment Regulations have been drafted to come into force by notice in the *New Zealand Gazette*. To achieve this, the Cabinet paper will need to be lodged by 6 April 2020 for consideration by CVD on 7 April 2020. We will provide you with the final versions of the Rule and Amendment Regulations on 6 April 2020.
28. Normally secondary legislation must be signed at least 28 days before it comes into force. The Cabinet paper seeks a waiver to this 28-day rule, as the Rule and Amendment Regulations respond to an emergency and confer only benefits on the public.

Communications once Rule and Amendment Regulations are in force

29. The Rule and Amendment Regulations will be communicated directly to the public, NZ Police and Local Government New Zealand. Waka Kotahi will publish the Rule on its website and provide guidance on the application of the Rule.
30. We recommend that you discuss any announcement with your colleague, the Minister of Police, to ensure consistency of messaging.
31. Waka Kotahi will also ensure its communications on the changes emphasise the importance of complying with driver licence conditions, and the need to keep vehicles up to standard, including through its existing vehicle safety check material.
32. The Rule and Amendment Regulations will be notified in the *New Zealand Gazette*.

Other relevant matters that may need to be resolved later

Withheld under section 9(2)(f)(iv)
of the OIA

- [Redacted]
- [Redacted]
- [Redacted]

36. We will therefore provide further advice to you on these matters, and on any others that are identified by the sector, in the upcoming weeks.

Proactively Revealed

Recommendations

37. The recommendations are that you:

- (a) **sign** the attached Cabinet paper Yes/No
- (b) **sign** the attached advice sheets Yes/No
- (c) **lodge** the Cabinet paper, together with the proposed Rule, Amendment Regulations and advice sheets with Cabinet Office on 6 April 2020 for consideration by Cabinet COVID-19 Ministerial Group on 7 April 2020. Yes/No
- (d) **authorise** notification of the rule Land Transport Rule: COVID-19 Response 2020 in the New Zealand Gazette Yes/No
- (e) **authorise** the laying of the rule Land Transport Rule: COVID-19 Response 2020 before the House of Representatives Yes/No

Brent Johnston
Manager, Mobility and Safety

MINISTER'S SIGNATURE:

DATE:

APPENDICES

- Appendix 1: Cabinet paper
- Appendix 2: Advice sheet (Rule)
- Appendix 3: Advice sheet (Regulations)
- Appendix 4: Rule (draft)
- Appendix 5: Amendment Regulations (draft)
- Appendix 6: Electronic lodgement form

Proactively Re-evaluated