

Temporary extension of driver licensing and vehicle certification documents - Proposed regulatory amendments and approach to re-compliance

Reason for this briefing	This briefing attaches, for cross-party consultation, a Cabinet paper seeking agreement to regulatory amendments to set dates for the renewal of vehicle certification documents, driver licences and endorsements via a Rule amendment. You agreed to this on 21 June 2020 [OC200410 refers]. 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 Amendment Rule.
Action required	Review the attached draft Amendment Rule and Cabinet paper and agree to commence cross-party consultation.
Deadline	8 July 2020
Reason for deadline	To enable the Cabinet paper to be lodged on 23 July 2020, for Cabinet Legislation Committee (LEG) on 28 July 2020.

Contact for telephone discussion (if required)

Name	Position	Telephone	First contact
Helen Presland	Acting Manager, Mobility and Safety	██████████	✓
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Privacy

MINISTER'S COMMENTS:

Date:	7 July 2020	Briefing number:	OC200477
Attention:	Hon Phil Twyford	Security level:	In-confidence

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Withdrawn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 of report

1. This briefing:
 - 1.1. attaches, for cross-party consultation, a Cabinet paper proposing amendments to the Land Transport Rule–COVID-19 Response (No 1) 2020 (the Rule) which temporarily extends some expired transport documents as a result of COVID-19 restrictions
 - 1.2. 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 Land Transport Rule: COVID-19 Response (No 1) Amendment 2020 (Amendment Rule) by Order in Council under section 152A.

You have agreed to an Amendment Rule to provide certainty around requirements for renewing expired vehicle certification and driver licensing documents

2. On 7 April 2020, the COVID-19 Ministerial Group (CVD) with Power to Act agreed to legislative changes which temporarily extended some expired vehicle certification and driver licensing documents for a period of up to six months. Within that six month period, Waka Kotahi NZ Transport Agency (Waka Kotahi) could set earlier statutory dates for renewing expired documents.
3. The Regulations Review Committee subsequently raised concerns about the lack of certainty created by the Rule. To address these concerns, you agreed to amend the Rule via Order in Council to:
 - 3.1. remove Waka Kotahi's delegated authority to set dates
 - 3.2. confirm 10 October 2020 as the cut-off date by which all expired documents affected by the Rule must be renewed [OC200410 refers].
4. The attached paper seeks Cabinet agreement to the proposed amendments. It incorporates feedback from departmental consultation. Waka Kotahi and the Treasury, NZ Police, Ministry of Business Innovation and Employment (Accident Compensation Policy) and ACC were consulted in the development of the paper. The Department of Prime Minister and Cabinet has been informed.
5. As we indicated in our earlier advice to you on this matter, NZ Police would prefer an earlier cut-off date to be implemented [OC200410 refers]. This is based on the potential small safety benefits that could be accrued by ensuring some documents are renewed earlier. The other departments did not raise any concerns with confirming 10 October 2020 as the cut-off date by which all expired documents affected by the Rule must be renewed. Appendix 1 outlines the rationale for choosing this option.
6. The Ministry's Chief Legal Adviser considers that you have legal authority to recommend that the Governor-General amends the Rule, by way of Order in Council, and that it complies with the relevant requirements. The Amendment Rule is certified by the Chief Legal Adviser as being in order for submission to the Executive Council.
7. The Amendment Rule would be made pursuant to the following sections of the Act:
 - 7.1. 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 transport within the land transport system, including (but not limited to) technical requirements, improving access and mobility, and protecting and promoting public health

- 7.2. 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
- 7.3. section 154, which provides that rules can be made to provide for driver licensing, including provisions for the issue, endorsement, alteration, replacement, renewal, surrender, suspension, expiry, and revocation of licences
- 7.4. section 158(a), which provides that rules can be made to provide for the identification, classification, registration, licensing, inspection, and audit of all vehicles
- 7.5. section 159, which provides that rules may provide for the issue, endorsement, alteration, replacement, renewal, surrender, expiry, suspension, and revocation of land transport documents.

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

8. 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. Our advice on these matters is summarised in Appendix 1.

Regulations Review Committee

9. Under section 152A(6) of the Act, ordinary rules are disallowable instruments for the purpose of the Legislation Act 2012 and, under section 41 of that Act, must be laid before the House of Representatives not later than the sixteenth sitting day after they are made.
10. You have not referred a draft of the Amendment Rule to the Regulations Review Committee under Standing Order 318(2).
11. We believe that there are no substantial grounds for the Regulations Review Committee to draw the Amendment Rule to the attention of the House of Representative under Standing Order 319.

Next steps

Cross-party consultation

12. You can commence cross-party consultation on the attached draft Cabinet paper and Amendment Rule.
13. We will seek feedback from your office following this process on 20 July 2020, and provide updated papers for your consideration on 21 July 2020 for lodgement with the Cabinet Office.

Cabinet lodgement by 23 July 2020

14. The Amendment Rule has been drafted to come into force 28 days after its notice in the *New Zealand Gazette*. To achieve this, the Cabinet paper will need to be lodged by 23 July 2020 for consideration by Cabinet Legislation Committee (LEG) on 28 July 2020.
15. We will provide you with the final version of the Amendment Rule on 23 July 2020. We will also prepare talking points for Cabinet, a media release and associated FAQs.

16. These timeframes are summarised below:

Key milestones	Date
Draft Cabinet paper and draft Amendment Rule for cross-party consultation	7–20 July 2020
Final Cabinet paper incorporating changes from cross-party consultation to Minister's office	21 July 2020
Final papers lodged with Cabinet Office	23 July 2020
Cabinet Legislation Committee (LEG)	28 July 2020
Cabinet	3 August 2020
Rule signed	3 August 2020
Rule in force	7 September 2020

Communications once the Amendment Rule is in force

17. The Amendment Rule will be communicated directly to the public, NZ Police and Local Government New Zealand. Waka Kotahi will publish the Amendment Rule on its website and provide guidance on the application of the Amendment Rule.
18. Waka Kotahi will continue to ensure its public communications on this matter:
 - 18.1. encourage people to renew their documents as soon as possible
 - 18.2. 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.
19. The Amendment Rule will be notified in the *New Zealand Gazette*.

Recommendations

20. The recommendation is that you:

- (a) **agree** to commence cross-party consultation on the attached Cabinet paper and Amendment Rule. Yes/No

Helen Presland
Acting Manager, Mobility and Safety

MINISTER'S SIGNATURE:

DATE:

Appendix 1: Our advice on matters you must have regard to in section 164(2) of the Land Transport Act 1998 when deciding to recommend that a rule is made by Order in Council

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 Amendment Rule will confirm 10 October 2020 as the date which all documents must be renewed.</p> <p>Setting earlier statutory dates for renewal was considered as this could lead to fewer vehicles (including at-risk vehicles) on the road that are uncertified. However this option was not chosen as:</p> <ul style="list-style-type: none"> • The proportion of crashes in which a warrantable vehicle fault was a contributing factor has historically been small (and will likely remain small). The safety benefits of this approach are therefore likely to be small. • The vast majority of people are continuing to get documents renewed on time even with the temporary extension in place. As at 22 June 2020, 71 percent of vehicles due for inspection had already been inspected, and demand for inspections has remained high since Alert Level 3. Driver licence renewals during May and June 2020 are close to typical application volumes in preceding years. • Modelling from Waka Kotahi suggests that demand curve differences between setting earlier statutory dates and retaining the six month extension is marginal. <p>Moreover, the proposed Amendment Rule 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>The Amendment Rule confirms that all documents that were eligible for the temporary extension would continue to remain valid until 10 October 2020, at which point they must be renewed.</p> <p>This reconfirms that drivers will not be unnecessarily restricted from using their vehicles 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>

Matter to be considered	Comment
<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 Amendment Rule will have no direct impact on the appropriate management of infrastructure.</p>
<p>Section 164(2)(e)(i) Whether the proposed rule assists economic development</p>	<p>The Amendment Rule will have no direct impact on economic development.</p>
<p>Section 164(2)(e)(ii) Whether the proposed rule improves access and mobility</p>	<p>This Amendment Rule enables people (who were eligible for the temporary extension) to use private vehicles to access places even if relevant documents have expired (until 10 October 2020).</p> <p>Although public transport and small passenger services are available in some areas, these do not necessarily provide an alternative travel option for people living outside of the main centres to access places.</p>
<p>Section 164(2)(e)(iii) Whether the proposed rule protects and promotes public health</p>	<p>Allowing people to continue to use their vehicles despite having expired documents is in line with current public health guidance stating that people who are unwell should avoid using public transport.</p>
<p>Section 164(2)(e)(iv) Whether the proposed rule ensures environmental sustainability</p>	<p>Allowing continued use of some vehicles with expired documents may increase transport greenhouse gas emissions.</p>
<p>Section 164(2)(ea) The costs of implementing measures for which the rule is being proposed</p>	<p>There are no additional costs of implementing the Amendment Rule.</p>
<p>Section 164(2)(eb) New Zealand's international obligations concerning land transport safety</p>	<p>The Amendment Rule will have no direct impact on our international obligations for land transport safety.</p>
<p>Section 164(2)(f) The international circumstances in respect of land transport safety</p>	<p>The Amendment Rule will have no direct impact on our international circumstances in respect of land transport safety.</p>
<p>Section 164(2)(g) Such other matters as you consider appropriate in the circumstances</p>	<p>The Amendment Rule will give certainty to the public, enforcement staff and transport service operators on an issue of public concern.</p> <p>There has not been any public consultation on this Amendment Rule. It has been discussed with New Zealand Automobile Association, Vehicle Testing NZ, Vehicle Inspection NZ and the Motor Trade Association. Some groups preferred setting an earlier eligibility cut-off date (due to the certainty of workflow it provides) but are aware that the proposed changes were being considered.</p>

Appendix 2: Draft Cabinet paper

Appendix 3: Draft Amendment Rule