



COVERSHEET

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| Minister | Hon Kris Faafoi | Portfolio | Immigration |
| Title of Cabinet paper | Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications and Fees) Regulations (No 3) 2020 | Date to be published | 25 February 2021 |

List of documents that have been proactively released

| Date | Title | Author |
|------------------|--|---------------------------------------|
| December 2020 | Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications and Fees) Regulations (No 3) 2020 | Office of the Minister of Immigration |
| 16 December 2021 | CBC-20-MIN-0138 | Cabinet Office |

Information redacted

YES / NO [select one]

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In Confidence

Office of the Minister of Immigration

Chair, Cabinet Business Committee

IMMIGRATION (VISA, ENTRY PERMISSION, AND RELATED MATTERS) AMENDMENT (COVID-19—APPLICATIONS AND FEES) REGULATIONS (NO 3) 2020

- 1 Reflecting the current border closures, this paper proposes to further extend the current suspension of the ability to submit a visa application by most people offshore in the *Immigration (Visa, Entry Permission and Related Matters) Regulations 2010* (the Visa Regulations). Cabinet's approval of the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications and Fees) Regulations (No 3) 2020* (the Amendment Regulations) will change the current end date of 8 February 2021 to 7 May 2021.
- 2 The paper also asks Cabinet to agree to a minor and technical change to enable the Safe Travel Zone carve out to work as intended. I am seeking a waiver to the 28-day rule for that change, on the basis that it confers only benefits.

Relation to government priorities

- 3 The proposed immigration regulation changes relate to the Government's response to COVID-19.

Executive Summary

- 4 This paper seeks Cabinet's agreement to changes to the Visa Regulations. The substantive change would, with regard to persons outside New Zealand, extend for a further three months (to 7 May 2021) the current suspension of their ability to apply for most categories of temporary entry class visa, agreed by Cabinet in October 2020 [CAB-20-MIN-0448]. Persons offshore can apply for a temporary visa once they have been accepted under the border exception process and invited to apply.
- 5 The extension to the current suspension will continue to manage the flow of incoming visa applications. As visas cannot be granted until the applicant is able to travel, but cannot be declined if they meet the policy of the day, increasingly large numbers of ageing applications were continuing to accumulate until the current suspension came into effect. Continuing the suspension will therefore enable Immigration New Zealand to focus on the efficient processing of visas for those people who have been granted exemptions or exceptions which allow them to travel to New Zealand.
- 6 Ministers agreed in October 2020 to carve out third country nationals in Safe Travel Zones who wish to apply for a visa to travel to New Zealand and this decision has been made in regulations. If Ministers wished to exempt a wider range of intending travellers (such as students) from the effect of the suspension during the three-month life of the regulations, this could be done through Ministers with Power to Act

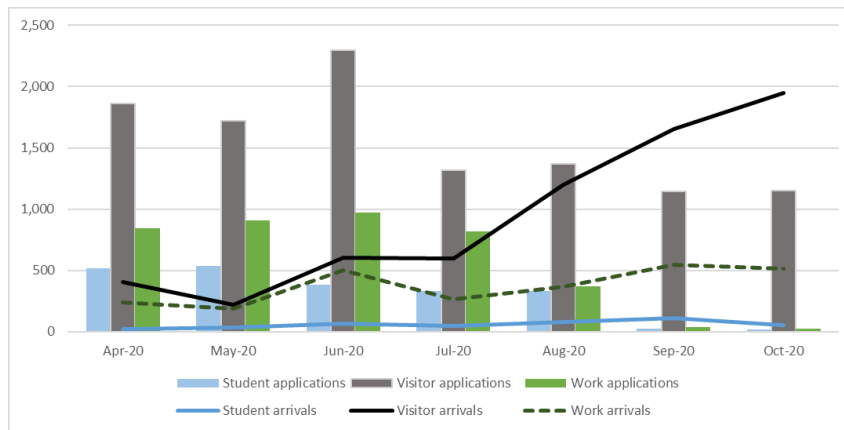
suspending the regulations in whole or part, or through Cabinet agreeing that a new group of travellers are eligible for a border exception.

- 7 The date change is intended to come into effect on Monday 8 February 2021. The suspension of certain offshore applications will expire on 7 May 2021 unless either further extended or previously revoked (in whole or in part) by Ministers with Power to Act, if conditions warrant it. The legislative ability to make further extensions is subject to a sunset clause and will expire on 15 May 2021, unless the *Immigration Act 2009* is amended. I intend to bring a proposal for amendment legislation to extend this and other immigration COVID-19 powers to Cabinet early in 2021.
- 8 Ministers are also asked to agree wording being removed from the regulations, to enable the Safe Travel Zone carve out to apply as intended by Cabinet [CAB-20-MIN-0448] (as the current wording inadvertently means that an application cannot be made until the person is checking in to travel). I am seeking a waiver to the 28-day rule, in order that this change can come into effect the day after the Amendment Regulations have been gazetted. The change will confer only benefits, in that it will enable visa-required nationals in a Safe Travel Zone to apply for visas as soon as a Safe Travel Zone comes into effect.

The exercise of the time-limited power has achieved its intended effect

- 9 The *Immigration (COVID-19 Response) Amendment Act 2020* (the Amendment Act) established a number of time-limited powers. Section 401A enables the making of regulations to suspend the ability of all persons, or any class of persons, who are outside New Zealand, to apply for a class or type of visa or submit an expression of interest in applying for a visa. The regulations may be extended for up to three months at a time, as long as each extension is approved before the regulations expire. The section 401A power will expire on 15 May 2021, unless the *Immigration Act 2009* is amended again.
- 10 Cabinet made decisions in July 2020 [CBC-20-MIN-0069 and LEG-20-MIN-0108] to temporarily suspend the ability to apply for most types of temporary entry class visa outside New Zealand. These decisions were made because Immigration New Zealand was continuing to receive significant numbers of temporary applications (including significant numbers of visitor visa applications) but, as the New Zealand border was and is closed, it was not possible to decide those applications. Cabinet agreed in October 2020 to extend the temporary suspension until February 2021 [CAB-20-MIN-0448].
- 11 Figure one below illustrates how temporary applications continued to be received from people offshore during lockdown months, although the Immigration New Zealand website advised against making applications, and the numbers of people who were allowed to travel to New Zealand were low. (Applications made on the basis of family connections to New Zealand, for humanitarian reasons, or for medical travel, are not included in the counts, but associated arrivals are counted.)
- 12 The sustained increase in visitor arrivals from August reflects the introduction of the Critical Visitor Visa mechanism, and the sustained reduction in applications from August similarly reflects the commencement and continuation of the regulations suspending most offshore temporary entry class applications. By comparison, a year ago, around 20,000 people arrived in New Zealand every day.

Figure one: Selected* offshore temporary visa applications compared with all temporary arrivals to New Zealand by month, April – October 2020



Source: MBIE statistics, query 8982 and A1 Arrivals table

- * Student: Full fee paying and Scholarship
- Visitor: Business, General Visitor and Group Visitor
- Work: Approved in Principle, Crew, Skilled Work, RSE, Work to Residence, Working Holiday Visa

- 13 Most offshore temporary entry class visa applications received during lockdown could not be approved (as the *Immigration Act 2009* establishes at section 43 that an Immigration Officer may not grant a visa if the Officer does not consider that entry permission will be granted to the person if they travel). However, if the applications otherwise met policy, they could not be declined either. At present, almost 39,000 temporary applications made offshore (not relating to family connections to New Zealand, medical travel, or other humanitarian reasons) are sitting on hand.
- 14 As applications age, the supporting details provided with them (such as medicals or job offers) go out of date and the reason for travel may evaporate, meaning that applicants would need to resubmit much of the material at the point that the border reopens. In addition, it is likely that a proportion of applicants will eventually request refunds, which carry a relatively high administrative cost both to consider, and to make if approved. The introduction of the current suspension has reduced the previous rate of growth of on-hand offshore applications (around 2,000 per month in May to July) to almost nil.

The proposed amendment continues the existing settings

- 15 The current regulations expire on 8 February 2021. In detail, they establish that offshore applications and expressions of interest for all temporary entry class visa categories are suspended, apart from applications from persons who have been invited to apply for a visa by Immigration New Zealand through the border exception process, and applications for the following visa types:
 - 15.1 Visas for partners and dependent children of a New Zealand citizen or resident, where the visa is based on that relationship;
 - 15.2 Antarctic Visitor and Work Visas;
 - 15.3 Visas for diplomatic and consular personnel, and recognised family members;
 - 15.4 Recognised Seasonal Employer Limited Visas.
- 16 I consider that it is appropriate to continue leaving these visa types open for application, to align with current border exemption policy settings, and to reflect their status with respect to New Zealand’s international obligations.

- 17 The Amendment Act specifies that, in recommending such regulations, I must be satisfied that they are reasonably necessary to manage the effects, or deal with the consequences of:
- 17.1 the outbreak of COVID-19;
 - 17.2 measures taken under the *Immigration Act 2009* or any other enactment to respond to the outbreak of COVID-19 or its effects; or
 - 17.3 any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.
- 18 I consider that extending the current suspension will continue to complement the border restrictions currently in place, and to communicate to persons offshore that, unless they are members of an exempted class of people or have special circumstances which qualify for a border exception, they are unable to travel to New Zealand until border restrictions are eased. Taking all of this into account, and noting that the current suspension has not been controversial, I recommend extending the current regulations for a further three months, to expire on 7 May 2021.
- 19 Ministers agreed in October 2020 to carve out third country nationals in Safe Travel Zones who wish to apply for a visa to travel to New Zealand and this decision has been made in regulations.
- 20 In line with the decision already made by Cabinet [CBC-20-MIN-0069] I propose that Ministers with Power to Act (the Minister of Immigration, the Minister of Foreign Affairs, the Minister for COVID-19 Response and the Minister of Health) be authorised to revoke the regulations, in whole or in part, upon my recommendation. (The Minister for COVID-19 Response replaces the Minister of Housing, reflecting the shift in responsibility for Managed Isolation and Quarantine.) This authorisation would enable, before the end of the three month period, the suspension to be lifted in full, if conditions warranted that change, or would enable groups of intending travellers (such as students) to be exempted from the suspension. As noted above at paragraph 15, people (including groups of people) who are invited to apply for a visa are not subject to the suspension.

A small wording change is also proposed to enable Safe Travel Zones to operate as intended

- 21 Ministers have already agreed that the suspension should not apply to people applying for visas from within a Safe Travel Zone, where they intend to travel to New Zealand from that Safe Travel Zone [CAB-20-MIN-0448]. The current wording of the Regulations reflects this through saying:

9A Suspension of ability to apply for certain visas

(1) The ability to apply for a temporary entry class visa is suspended for all persons who are outside New Zealand, except for any person who— [...]

(aa) is—

(i) in, and intends to travel from, a COVID-19 Safe Travel Zone; and

(ii) exempt from the requirement (if any) under an order made under section 11 of the *COVID-19 Public Health Response Act 2020* to be isolated or quarantined on (or as soon as practicable after) arrival in New Zealand; [...]

- 22 Recent examination of the wording has identified that, as people are exempted from the requirement to be isolated or quarantined under an Air Border Order or a Quarantine Order, and such Orders would not apply until people are travelling, the wording as it stands would technically not allow people to apply for a visa until they were at the airport. Officials have consulted with the Parliamentary Counsel Office and have agreed that the most economical mechanism for reflecting Cabinet's intent is to remove 9A(1)(aa)(ii). No unintended consequences of this change have been identified.
- 23 The Amendment Regulations reflect this wording change. As noted below, a waiver of the 28-day rule is sought, to enable visa-required nationals in a Safe Travel Zone to apply for visas as soon as a Safe Travel Zone comes into effect.

The regulatory power to suspend applications is subject to a sunset clause

- 24 As noted in paragraph 9 above, the amendment legislation that created the power to make regulations to suspend classes of offshore applications, among a range of other immigration powers to help manage our response to COVID-19, made them time-limited. All of those powers will expire on 15 May 2021. At this stage it appears unlikely that the COVID-19 outbreak will have been brought under control globally at that point and therefore New Zealand is likely to continue with border restrictions for some time. I therefore intend to seek Cabinet decisions in early 2021 for amendment legislation to extend this and other relevant immigration COVID-19 powers.

Financial implications

- 25 The major proposal in this paper has no material financial implications. The continuation of the visa applications suspensions means that Immigration New Zealand is continuing to not collect fee revenue from the offshore temporary entry class visa applications that might otherwise be made while the proposed regulations are in effect. However, I do not consider it appropriate for Immigration New Zealand to accept applications and fees when there is no or a very low likelihood that applicants will be able to travel to New Zealand. In addition, it is likely that a proportion of applicants would request refunds, which would carry a relatively high administrative cost.

Legislative Implications

- 26 It is proposed that the policy recommendations in this paper are given effect by:
- 26.1 making regulations under the *Immigration Act 2009*; and
 - 26.2 amending the *Immigration (Visa, Entry Permission and Related Matters) Regulations 2010*.

Impact Analysis

Regulatory Impact Statement

- 27 The Treasury has determined that this policy is exempt from providing a Regulatory Impact Statement (RIS) as it is intended to alleviate the short term impacts of the declared emergency event of the COVID-19 outbreak. The proposal would also be exempt from the requirement to provide a RIS on the basis that it has minor impacts on individuals, businesses and not-for-profits. At the same time, the amendments suggested in this paper should be included in comprehensive analysis of the suite

of border settings responding to COVID-19 to be developed by Government agencies.

Climate Implications of Policy Assessment

28 This proposal does not have climate implications.

Population Implications

29 This proposal does not have population implications.

Human Rights

30 While the *Immigration Act 2009* recognises that immigration matters inherently involve different treatment on the basis of personal characteristics, immigration policy development seeks to ensure that any changes are necessary and proportionate. The Ministry of Business, Innovation and Employment considers that the proposals in this paper are consistent with the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*.

Timing and 28-day rule

31 If Cabinet agrees to these two proposals and to the associated regulation changes, I recommend that the substantive change (the new date) come into force on 8 February 2021, which is the date that the current application suspension expires.

32 I recommend a waiver of the 28-day rule for the minor and technical change (removing 9A(1)(aa)(ii)), in order that it can come into effect on 18 December 2021, the day after the Amendment Regulations are gazetted. The reason for this waiver is that it confers only benefits, in that it removes constraints to third country visa-required nationals applying for visas to travel to New Zealand in the event that New Zealand enters into a Safe Travel Zone Arrangement or agrees to quarantine-free travel.

33 If it is considered appropriate to continue suspending offshore temporary visa applications after 7 May 2021 I will return to Cabinet in early 2021 to seek further agreement.

Compliance

34 The Amendment Regulations comply with each of the following:

34.1 the principles of the Treaty of Waitangi;

34.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;

34.3 relevant international standards and obligations;

34.4 the Legislation Design Advisory Committee's Guidelines on Process and Content of Legislation.

35 Specifically, I note that the proposed continuation of the suspension of offshore temporary visa applications does not unlawfully discriminate on the grounds of nationality, as it is based on where individuals are, rather than on their citizenship.

Regulations Review Committee

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

Certification by Parliamentary Counsel

- 37 The draft Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Consultation

- 38 This paper was prepared by the Ministry of Business, Innovation and Employment. The Ministries of Education and Foreign Affairs and Trade, Education New Zealand, the New Zealand Customs Service, the Treasury and the Department of Prime Minister and Cabinet have been consulted and their views taken into account during the development of this paper.

Communications

- 39 A communications plan will be developed by officials in consultation with Ministers' offices. Communications will be appropriately positioned within wider messaging designed to ensure that international markets (including international education markets) understand that New Zealand will welcome travellers once the threat of importing COVID-19 can be appropriately managed.

Proactive release

- 40 I propose to release this paper proactively. Any redactions made will be consistent with the *Official Information Act 1982*.

Recommendations

- 41 I recommend that Cabinet:

- 1 **note** that, in July 2020, to reflect the current border closures, Cabinet agreed to suspend, for the maximum period of three months, the ability of people offshore to apply for, or express interest in applying for, most temporary entry class visa types [CBC-20-MIN-0069 and LEG-20-MIN-0108], via the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19 – Applications and Fees) Regulations 2020*, which came into effect on 10 August 2020;
- 2 **note** that, in October 2020, Cabinet agreed to continue that suspension [CAB-20-MIN-0448] via the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications and Fees) Regulations (No 2) 2020*, which came into effect on 9 November 2020 and will expire on 8 February 2021 unless extended through a further regulation change;
- 3 **note** that the Minister of Immigration considers that the suspension of applications should be continued beyond the February 2021 expiry date, and that this continues to be reasonably necessary to manage the effects of, or deal with the consequences of, the outbreak of COVID-19;

Policy decisions

- 4 **agree** to extend the current suspension of applications for, and expressions of interest in applying for, most offshore temporary visas for a further three months to 7 May 2021;
- 5 **agree** that Ministers with Power to Act (the Minister of Immigration, the Minister of Foreign Affairs, the Minister for COVID-19 Response and the Minister of Health) continue to be authorised to revoke the suspension, in whole or in part, should the Minister of Immigration recommend that:
 - 5.1 suspending the ability of persons outside of New Zealand from applying for a temporary entry class visa is no longer required; or
 - 5.2 applications for certain temporary entry class visas should be reopened before the end of the suspension period;
- 6 **note** that, in October 2020, Cabinet agreed that the suspension not apply to people applying for visas from within a Safe Travel Zone that is in effect, where they intend to travel to New Zealand from that Safe Travel Zone [CAB-20-MIN-0448];
- 7 **agree** to a minor and technical change (removing wording at 9A(1)(aa)(ii), which refers to an Order, such as an Air Border Order) which will enable the Safe Travel Zone carve out to work as intended;

Regulations

- 8 **approve** the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications and Fees) Regulations (No 3) 2020*, which give effect to the decisions in paragraphs 4 and 7 above;
- 9 **authorise** the submission to the Executive Council of the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications and Fees) Regulations (No 3) 2020*;

Timing

- 10 **agree** that the amended date in the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications and Fees) Regulations (No 3) 2020* come into effect on 8 February 2021;
- 11 **note** that a waiver of the 28-day rule is sought for the minor and technical change in paragraph 7 above (which removes wording):
 - 11.1 so that the regulations can come into force as soon as possible;
 - 11.2 on the grounds that this change will only confer benefits, as it will enable visa-required nationals in a Safe Travel Zone to apply for visas as soon as a Safe Travel Zone comes into effect;
- 12 **agree** to waive the 28-day rule for the minor and technical change in paragraph 7 above (removing wording) so that the regulations can come into force as soon as possible;
- 13 **note** that, if it is considered appropriate to continue suspending offshore temporary visa applications after 7 May 2021, the Minister of Immigration will return to Cabinet to seek further agreement;

- 14 **note** that the power to make these regulations will expire, along with other immigration powers intended to respond to COVID-19, on 15 May 2021; and
- 15 **invite** the Minister of Immigration to submit a proposal to Cabinet to amend the *Immigration Act 2009* to extend or remove the expiry date for this and other relevant immigration COVID-19 powers early in 2021.

Authorised for lodgement

Hon Kris Faafoi

Minister of Immigration