



## COVERSHEET

<b>Minister</b>	Hon Kris Faafoi	<b>Portfolio</b>	Immigration
<b>Title of Cabinet paper</b>	Immigration (Visa, Entry Permission, And Related Matters) Amendment (Covid-19—Applications) Regulations 2021	<b>Date to be published</b>	4 June 2021

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
April 2021	Immigration (Visa, Entry Permission, And Related Matters) Amendment (Covid-19—Applications) Regulations 2021	Office of the Minister of Immigration
8 April 2021	LEG-21-MIN-0034 Immigration (Visa, Entry Permission, And Related Matters) Amendment (Covid-19—Applications) Regulations 2021	Cabinet Office
1 March 2021	2021-2592 Minor and technical change to Regulations	MBIE

### **Information redacted**

**NO**

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In Confidence

Office of the Minister of Immigration

Chair, Cabinet Legislation Committee

## **IMMIGRATION (VISA, ENTRY PERMISSION, AND RELATED MATTERS) AMENDMENT (COVID-19—APPLICATIONS) REGULATIONS 2021**

- 1 This paper asks Cabinet to agree to extend by a further three months, to 6 August 2021, the current suspension of the ability to submit a visa application by most people offshore. It asks Cabinet to approve the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications) Regulations 2021* (the 2021 Amendment Regulations). The 2021 Amendment Regulations also implement decisions made by Cabinet on 22 March 2021, through making two minor changes to support the implementation of wider quarantine-free travel [CAB-21-MIN-0081].

### **Relation to government priorities**

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

### **Executive Summary**

- 3 This paper seeks Cabinet's agreement to changes to the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* (the Visa Regulations). These changes would, with regard to persons outside New Zealand, extend for a further three months (to 6 August 2021) the current suspension of their ability to apply for most categories of temporary entry class visa. Cabinet first agreed to this suspension in July 2020 [CBC-20-MIN-0069, LEG-20-MIN-0108] and has subsequently agreed twice to continue the suspension [CAB-20-MIN-0448 and CBC-20-MIN-0138].
- 4 Persons offshore who fall within the scope of the suspension can however apply for a visa once they have expressed interest in being invited to apply for a temporary entry class visa on the basis of having a critical purpose to travel to New Zealand (the border exception process).
- 5 The extension to the current suspension will continue to manage the flow of incoming visa applications, and enable Immigration New Zealand to continue to focus on the efficient processing of visas for those people who are not subject to COVID-19 border restrictions or have been granted visas under the exceptions process which allow them to travel to New Zealand. Parliamentary Counsel Office (PCO) has advised that, as this change is minor and technical, my agreement to the change being made was sufficient for PCO to draft the required amendment regulation.
- 6 Ministers agreed in October [CAB-20-MIN-0448] to carve out third country nationals in safe travel zones who wish to apply for a visa to travel to New Zealand, and the Visa Regulations were consequentially amended on 9 November 2020. As part of its recent decisions on Safe Travel Initiatives for the Cook Islands and

Australia [CAB-21-MIN-0081], Cabinet agreed to two further technical changes to the Visa Regulations, to:

- 6.1 ensure that once a quarantine-free travel zone is in place, third country nationals in that zone can continue to make applications for temporary entry class visas, regardless of whether quarantine-free travel is in effect or not; and
  - 6.2 amend the references to “safe travel zone” in the Visa Regulations to “quarantine-free travel zone”.
- 7 These decisions are also reflected in the 2021 Amendment Regulations for which approval is sought.
- 8 The 2021 Amendment Regulations must come into effect by 7 May 2021 at the latest, as the current suspension of certain offshore applications will expire on 7 May 2021. The regulations can only be renewed while they are in force, or they will be automatically revoked.
- 9 The legislative ability to make further extensions is subject to a sunset clause and will currently be repealed on 16 May 2021. Cabinet has recently agreed to amend the *Immigration Act 2009* [DEV-21-MIN-0016]. If passed, the amendment legislation will extend the repeal of this and other immigration COVID-19 powers to 16 May 2023, and will extend the maximum duration of any future amendment regulations suspending (and extending) temporary entry class applications from three to six months.
- 10 The paper seeks a waiver of the 28-day rule to enable full consultations to be completed. This will have little effect on the public, as the regulations maintain the status quo (since August 2020) with regard to most offshore applications for temporary entry class visas and, where they change, confer minor benefits to third country nationals in quarantine-free travel zones. As noted above, the regulations can only be renewed while they are in force, or they will be automatically revoked.

### **Time-limited legislation enables us to prevent people offshore from applying for temporary entry class visas unless invited**

- 11 The *Immigration (COVID-19 Response) Amendment Act 2020* 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.
- 12 Cabinet made decisions in July [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] and in December 2020 further extended it to May 2021 [CBC-20-MIN-0138].

- 13 These decisions were effected by, in turn, the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications and Fees) Regulations 2020* (the 2020 Amendment Regulations), the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications and Fees) Regulations (No 2) 2020*, and the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications and Fees) Regulations (No 3) 2020*.

**The exercise of this power is continuing to achieve its intended effect**

- 14 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) but, if the applications otherwise met policy, they could not be declined either.
- 15 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.
- 16 Before the 2020 Amendment Regulations came into effect in August 2020, temporary applications were continuing to be received from people offshore, even though the Immigration New Zealand website advised against making applications and the numbers of people who were allowed to travel to New Zealand were low. The introduction of the current suspension effectively stopped the inflow of applications which could not be processed.
- 17 Most non-New Zealanders who wish to travel to New Zealand now gain approval to do so through qualifying for a border exception (such as through being a family member of a New Zealander, having a critical skill, having a humanitarian reason for travel, or being a returning PhD student), then being invited to apply for the relevant visa which, if granted, is conditional on having or carrying out their critical purpose for travelling to New Zealand.

**The proposed amendment continues the existing settings**

- 18 The current suspension of applications ends, and the regulation providing for suspensions will be repealed, on 7 May 2021. They establish that offshore applications 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:
- 18.1 visas for partners and dependent children of a New Zealand citizen or resident, where the visa is based on that relationship;
- 18.2 Antarctic Visitor and Work Visas;
- 18.3 visas for diplomatic and consular personnel, and recognised family members;
- 18.4 Recognised Seasonal Employer Limited Visas.

- 19 The Immigration Act 2009 requires that, in recommending such regulations, I must be satisfied that they are reasonably necessary to manage the effects, or deal with the consequences of:
- 19.1 the outbreak of COVID-19;
  - 19.2 measures taken under the Immigration Act or any other enactment to respond to the outbreak of COVID-19 or its effects; or
  - 19.3 any other measures (whether in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.
- 20 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 therefore recommend extending the current regulations for a further three months, to expire on 6 August 2021.
- 21 Cabinet has already agreed [CBC-20-MIN-0069] that Ministers with Power to Act (the Minister of Immigration, the Minister of Foreign Affairs, the Minister of Housing and the Minister of Health) are authorised to revoke the regulations, in whole or in part, upon my recommendation. This means that, if changing circumstances warranted it, the suspension could be lifted in full or in part before the end of the three month period. As noted at paragraph 18 above, people (including groups of people) who are invited to apply for a visa are not subject to this suspension.
- 22 Parliamentary Counsel Office (PCO) has advised that, as this change is minor and technical, my agreement to the change being made was sufficient for PCO to draft the required amendment regulation.

**Proposed legislation will extend the repeal date of this regulatory power**

- 23 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 the powers will be repealed on 16 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.
- 24 Cabinet has recently approved my bringing legislation before the House to amend the *Immigration Act 2009* to extend the repeal date by two years [DEV-21-MIN-0016]. Cabinet also agreed to extend the maximum duration of the regulations from three to six months, on the basis that the frequent renewal of the regulations both is burdensome, and may be giving some intending visa applicants the impression that the border will open soon, which is not the case. I intend to introduce the amendment bill on 30 March 2021.
- 25 If the legislation is passed and I consider it appropriate to further extend the suspension of the ability to apply for certain classes of offshore temporary entry visas, I will return to Cabinet to seek agreement to amendment regulations later this year.

## **The amendment regulations also implement recent decisions relating to quarantine-free travel**

- 26 On Monday 15 March 2021, Cabinet considered a paper by the Minister for COVID-19 Response seeking decisions on Safe Travel Initiatives for the Cook Islands and Australia [CAB-21-MIN-0081]. Cabinet agreed to amend the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* to:
- 26.1 ensure that once a quarantine-free travel zone is in place, third country nationals in that zone can continue to make applications for temporary entry class visas, regardless of whether quarantine-free travel is in effect or not; and
- 26.2 amend the references to safe travel zone to quarantine-free travel zone.
- 27 Cabinet also noted that, in the event that a short 'pause' becomes a formal suspension or termination of quarantine-free travel, Cabinet may be invited to consider the re-suspension of off-shore visa applications.

## **Financial implications**

- 28 The proposals in this paper have 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 carry a relatively high administrative cost.

## **Legislative Implications**

- 29 It is proposed that the policy recommendations in this paper are given effect by amending the *Immigration (Visa, Entry Permission and Related Matters) Regulations 2010*.

## **Impact Analysis**

### *Regulatory Impact Statement*

- 30 The Treasury has determined that these policies are exempt from providing a Regulatory Impact Statement (RIS) as they are 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 extension of the suspension 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*

- 31 The suspension extension proposal does not have climate implications.

### *Population Implications*

- 32 The suspension extension proposal does not have population implications.

## Human Rights

- 33 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

- 34 I seek a waiver of the 28-day rule to enable full consultations to be completed. This will have little effect on the public, as the regulations maintain the status quo (since August 2020) with regard to most offshore applications for temporary entry class visas and, where they change, confer minor benefits to third country nationals in quarantine-free travel zones. The regulations can only be renewed while they are in force, or they will be automatically revoked.
- 35 I recommend that the Amendment Regulations come into force on 7 May 2021, which is the date that the current application suspension ends and the regulation providing for suspension will be repealed.
- 36 If it is considered appropriate to continue suspending offshore temporary visa applications after 6 August 2021, and legislative settings allow, I will return to Cabinet in mid-2021 to seek further agreement.

## Compliance

- 37 The Amendment Regulations comply with each of the following:
- 37.1 the principles of the *Treaty of Waitangi*;
  - 37.2 the rights and freedoms contained in the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993*;
  - 37.3 relevant international standards and obligations;
  - 37.4 the Legislation Design Advisory Committee's Guidelines on Process and Content of Legislation.
- 38 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

- 39 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

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

## Consultation

- 41 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.
- 42 Education sector representatives noted that it would be desirable that the government have firm plans about how we will be able to safely reopen further by August, to support planning by the international education sector for the 2022 year.

## Communications

- 43 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

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

## Recommendations

- 45 I recommend that Cabinet:

1 **note** that:

- 1.1 in July 2020, the Cabinet Business Committee 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]
- 1.2 the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19 – Applications and Fees) Regulations 2020*, which came into effect on 10 August 2020, gave effect to that decision;

2 **note** that:

- 2.1 in October 2020, Cabinet agreed to continue that suspension [CAB-20-MIN-0448];
- 2.2 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, gave effect to that decision;

3 **note** that:

- 3.1 in December 2020, the Cabinet Business Committee agreed to continue that suspension [CBC-20-MIN-0138];
- 3.2 this was given effect by the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications and Fees) Regulations (No 3) 2020*, which came into effect on 8 February 2021 gave effect to that decision;



- 3.3 unless the suspension is extended through a further regulation change before 7 May 2021 the suspension will end, and the suspension regulation will be repealed;
- 4 **note** that the Minister of Immigration considers that the current suspension of certain applications should be continued beyond the May 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 and to manage the impacts of the measures that have been taken to manage COVID-19;
- 5 **agree** to extend the current suspension of applications for most offshore temporary visas for a further three months, to 6 August 2021;
- 6 **note** that Ministers with Power to Act (the Minister of Immigration, the Minister of Foreign Affairs, the Minister of Housing and the Minister of Health) continue to be authorised to revoke the regulations, in whole or in part, should the Minister of Immigration recommend that:
  - 6.1 suspending the ability of persons outside of New Zealand from applying for a temporary entry class visa is no longer required; or
  - 6.2 applications for certain temporary entry class visas should be reopened before the end of the suspension period;
- 7 **note** that on 22 March 2021, in the context of the implementation of wider quarantine-free travel, Cabinet agreed to amend the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* to:
  - 7.1 ensure that once a quarantine-free travel zone is in place, third country nationals in that zone can continue to make applications for temporary entry class visas, regardless of whether quarantine-free travel is in effect or not; and
  - 7.2 amend the references to 'safe travel zone' to 'quarantine-free travel zone'; [CAB-21-MIN-0081]
- 8 **approve** the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications) Regulations 2021*, which give effect to the decisions made in paragraph 5 and referenced in paragraph 7 above;
- 9 **authorise** the submission to the Executive Council of the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications) Regulations 2021*;
- 10 **note** that a waiver of the 28-day rule is sought:
  - 10.1 to enable full consultations to be completed and to enable the regulations to come into force before the current suspension period expires on 7 May 2021;
  - 10.2 on the grounds that this will have little effect on the public, noting they maintain the status quo with regard to most offshore applications for temporary entry class visas and, where they change, confer minor benefits to third country nationals in quarantine-free travel zones;
- 11 **agree** to waive the 28-day rule so that the *Immigration (Visa, Entry Permission, and Related Matters) Amendment (COVID-19—Applications) Regulations 2021* can come into effect on 7 May 2021; and

- 12 **note** that, if it is considered appropriate to continue suspending offshore temporary visa applications after 6 August 2021, the Minister of Immigration will return to Cabinet to seek further agreement, but that the ability to do this will depend upon the passage of amendment legislation recently agreed to by Cabinet and due to be introduced shortly [DEV-21-MIN-0016].

Authorised for lodgement

Hon Kris Faafoi

**Minister of Immigration**