



BRIEFING

Regulatory changes to support cruise passenger and crew management – COVID-19

Date:	6 March 2020	Priority:	High
Security classification:	Restricted	Tracking number:	BR 2605 19-20

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	Note the proposals in the attached paper for discussion with officials and raising with Cabinet	9 March 2020
Hon Kris Fa'afoi Minister of Customs Hon Poto Williams Associate Minister of Immigration	For information	

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Siân Roguski	Manager, Immigration Policy	04 901 3855	Privacy of natural persons	✓
Christine Hyndman	Principal Policy Advisor	04 901 8575		

The following departments/agencies have been advised
Customs, Ministry of Health

Minister's office to complete:

☐ Approved

☐ Declined

☐ Noted

☐ Needs change

☐ Seen

☐ Overtaken by Events

☐ See Minister's Notes

☐ Withdrawn

Comments



BRIEFING

Regulatory changes to support cruise passenger and crew management – COVID-19

Date:	6 March 2020	Priority:	High
Security classification:	Restricted	Tracking number:	BR 2605 19-20

Purpose

As previously advised (BR 2532 19-20), officials have been undertaking further work to consider options in the marine space in response to the COVID-19 outbreak. This paper proposes two amendments to the *Immigration (Visa, Entry Permission and Related Matters) Regulations 2010* (the Visa Regulations) for discussion with officials and Ministerial colleagues. They could be progressed rapidly if agreed.

Officials also recommend that Ministers consider extending the sunset date for the already-Gazetted changes to the *Immigration (Carriers' Information Obligations) Regulations 2010* (the Information Regulations) from 30 April 2020 to 30 September 2020. The obligations on carriers which are enabled by these changes can be lifted at any time.

Recommended action

The Ministry of Business, Innovation and Employment (the Ministry) recommends that you:

a **Note** that:

- a. cruise travellers who are not New Zealanders are currently deemed to hold a visa and entry permission upon their first entry to a harbour, which limits the ability of Immigration New Zealand to manage the entry and stay of non-New Zealanders in the circumstance that COVID-19 is suspected or confirmed on a cruise ship, including after any quarantine period has ended; and
- b. there is some uncertainty as to whether a person whose visa waiver status has been suspended holds a valid Electronic Travel Authority, and this means that people on a cruise vessel whose visa waiver has been suspended could argue that they nonetheless held a deemed visa and entry permission once they arrived in a harbour

Noted

b **Note** that officials recommend changes to the *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* to:

- a. make it possible to require cruise passengers and crew to apply for entry permission and a visa on arrival at a port; and
- b. clarify that an Electronic Travel Authority ceases to be valid where a person has had their visa waiver status suspended because they are no longer a person to whom visa waiver to travel to New Zealand applies

Noted

- c **Note** that the *Immigration (Carriers' Information Obligations) Amendment Regulations 2020*, which enable the Chief Executive of the Ministry to require a carrier, and a person in charge, of a commercial craft to request specified information from intending travellers and to advise Immigration New Zealand of certain responses, are automatically repealed on 30 April 2020, but that officials consider it would be prudent to extend that date to 30 September 2020

Noted

- d **Direct** officials to develop a paper for consideration by Ministers with Power to Act on Thursday 12 March 2020 to seek:

- a. agreement to the changes recommended at b and c above; and
- b. waivers of the 28-day rule

Agree / Disagree / Discuss

- e **Discuss** these recommendations with officials at the next agency meeting, with a view to raising them at Cabinet on Monday 9 March, noting that:

- a. the policy decisions could be made by Ministers with Power to Act on Thursday 12 March; and
- b. the amendment regulations could be considered by Cabinet and Executive Council on Monday 16 March 2020.

Agree / Disagree



Siân Roguski
Manager, Immigration Policy
Labour, Science and Enterprise, MBIE

06 / 03 / 2020

Hon Iain Lees-Galloway
Minister of Immigration

..... / /

Current Health and Immigration powers are insufficient if cruise vessels enter New Zealand waters and have suspected COVID-19 on board

1. Travellers who enter New Zealand by air and who are not citizens must apply for entry permission at the border. Residence class visa holders must be granted entry permission^[1] but temporary visa holders and applicants (including Australian citizens and permanent residents)^[2] can be refused entry.
2. Travellers who arrive in New Zealand on a cruise vessel are however deemed to hold a visa and entry permission upon their first entry to a harbour. This means that they are not required to apply for a visa and entry permission, and cannot legally be refused entry, and there is no ability under immigration legislation to prevent them from disembarking. Once they have disembarked they cannot be easily removed from New Zealand: they could be made liable for deportation but would have 28 days to appeal.
3. At present COVID-19 is a notifiable infectious disease. A cruise vessel which entered New Zealand waters which had suspected cases on board would be managed under the applicable Health powers, which for notifiable diseases are consent-based (people can be asked to self-isolate but cannot be forced to, for example).
4. The Minister of Health is considering changing the status of COVID-19 from a notifiable infectious disease to a quarantinable disease. This would give health officials stronger tools to reduce the risk of transmission of the disease to the New Zealand community, which could be backed up by Police enforcement if necessary. It would enable all people in a place or on a vessel, such as a cruise ship, to be managed irrespective of the immigration status of those people, covering them both while on the ship and after disembarkation.

Changes to the Visa Regulations would improve the ability to manage cruise travellers who are not New Zealanders

5. Officials recommend a complementary rapid change to immigration regulations to enable cruise passengers and crew, who are not New Zealand citizens or residents, to be appropriately managed in terms of their visa status during and after a quarantine period.
6. This change would override the current deemed status of non-New Zealand cruise passengers and crew. It would also mean their presence was captured in immigration IT systems. It would also address the issue that, as those visas expire on the earlier of 28 days or when the ship leaves New Zealand, people who need to remain for longer (for example, because they are being treated in hospital) may inadvertently become overstayers.
7. The proposals would see a change to the Visa Regulations such that cruise passengers and crew would be required to apply for entry permission and a visa on arrival at a port where part of the port (such as a wharf) was designated as an Immigration Control Area (ICA). This designation would be temporary, to not impede the ongoing commercial operation of the port. Applications for entry permission and visas would be made by an arrival card, as they are in the air channel.

^[1] unless their resident visa was granted offshore and this is their first entry to New Zealand.

^[2] who travel visa waiver to New Zealand and apply for a new resident visa on each arrival, so do not hold a resident class visa while travelling unless they have separately applied for and been granted a permanent resident visa.

8. The logistics of efficiently processing visas for several thousand people are being developed. It may be possible to use the ship's manifest to rapidly create the visa records in INZ systems, although the legal ramifications of this are being worked through.
National security or defence
9. Officials also recommend amending the Visa Regulations to clarify that suspending a cruise passenger or crew member's visa waiver status before they travel to New Zealand invalidates their Electronic Travel Authority (NZeTA). This means both that they have no legal basis to travel to New Zealand and that, if they still manage to travel here, they cannot be deemed to hold a visa and entry permission on arrival. This would apply whether the person arrived in an ICA or not.

A small change to the Information Regulations would be prudent

10. The *Immigration (Carriers' Information Obligations) Amendment Regulations 2020* enable the Chief Executive of the Ministry to require a carrier, and a person in charge of a commercial craft, to request specified information from intending travellers and to advise Immigration New Zealand of certain responses. This facility is automatically repealed on 30 April 2020. Officials consider that it would be prudent to extend that date to 30 September 2020 at this stage.
11. The requirement on carriers can be withdrawn at any time prior to the Regulation being repealed, through a notification by the Chief Executive of the Ministry.
12. Finally, officials recommend that, if you agree to progress these changes, you seek a waiver of the 28-day rule to enable them to be brought into effect as soon as practicable.

Next steps

13. Officials are available to discuss this paper on Monday 9 August. You could consider mentioning the proposals at Cabinet later that day.
14. If you agree, officials will prepare a paper for consideration by Ministers with Power to Act on Thursday 12 March. That paper would include the policy proposals and invite you to issue drafting instructions to PCO.
15. Cabinet and Executive Council could then consider the legislation paper and amendment regulations on Monday 16 March 2020, and they could be gazetted and come into force on Tuesday 17 March 2020.
16. Officials have not yet discussed these proposals with PCO. It may be prudent for you to seek agreement from the Attorney-General for drafting the amendment regulations in advance of the policy decisions. Officials will be able to advise you about this early next week.