



LAND TRANSPORT (DRIVER LICENSING) (COVID-19-TEMPORARY EXTENSION OF DEEMED LICENCES) AMENDMENT RULE 2020

Overview for Consultation

19 OCTOBER 2020

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More information

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Wellington 6141

This document is available on Waka Kotahi NZ Transport Agency's website at <http://www.nzta.govt.nz>

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PROCESS FOR MAKING RULE CHANGES

The *Land Transport Act 1998* (the Act) provides the legal framework for making Land Transport Rules. Section 161 states the procedures by which the Minister makes ordinary Rules.

What are Land Transport Rules?

Land Transport Rules (Rules) are instruments made by the Minister of Transport or their delegate ('the Minister') under the Act.

The Act sets out principles and the policy framework. Rules contain detailed requirements, including standards and processes, for putting those principles and policy into operation. Rules cover a range of land transport issues. Outcomes that Rules aim to achieve include, but are not limited to, the following:

- Safeguarding and improving land transport safety and security
- Improving access and mobility
- Assisting economic development
- Protecting and promoting public health
- Ensuring environmental sustainability.

Compliance with Rules is required because they form part of New Zealand transport law. The specific offences and penalties applicable to each Rule are set out in the Act or in Regulations.

Most Rules are drafted by Waka Kotahi NZ Transport Agency (Waka Kotahi), by an arrangement with the Chief Executive of the Ministry of Transport, working closely with the Ministry of Transport's policy and legal advisors.

Rules are drafted in plain language to be easily understood. Waka Kotahi undertakes consultation on proposed changes to Rules on behalf of the Minister. The issues raised in submissions on the proposed Rule changes are analysed and considered in preparing Rules for the Minister to sign.

Matters the Minister must have regard to when making Rules

The Act sets out the matters the Minister must have regard to when making a Rule (in section 164(2)). In summary, these are:

- Nature of the proposed activity or service for which the Rule is being established
- Risks to land transport safety:
 - The level of risk to land transport safety in each proposed activity or service
 - The level of risk existing to land transport safety in general in New Zealand
 - The need to maintain and improve land transport safety and security
- Appropriate management of infrastructure
- Assisting achievement of strategic objectives for transport - whether a proposed Rule:
 - Assists economic development
 - Improves access and mobility
 - Protects and promotes public health
 - Ensures environmental sustainability
- Costs of implementing the proposed changes

- International considerations: New Zealand's international obligations concerning land transport safety, and the international circumstances in respect of land transport safety.

Having regard to those matters for the Land Transport (Driver Licensing) (Covid-19-Temporary Extension of Deemed Licences) Amendment Rule 2020 (the proposed Rule)

Proposed activity or service: The proposed Rule will extend the period of eligibility for overseas licence holders to drive in New Zealand. Under normal circumstances, overseas licence holders who enter New Zealand on a temporary visa have been able to utilise the ability to 'reset' the 12-month period

Risks to land transport safety: The proposed Rule would not present a risk to road safety, as affected individuals have previously been able to reset the 12-month window through travelling overseas and returning to New Zealand. Crash analysis statistics held by Waka Kotahi show that overseas drivers represent a small portion of overall crash data, being at fault in 4% of all crashes. This has remained consistent over the past decade, despite international visitor numbers increasing by 45% over the same time frame.

Assisting achievement of strategic objectives for transport:

- **Assists economic development:** The proposed Rule continues to facilitate overseas licence holders being eligible to drive in New Zealand. Waka Kotahi has previously heard concerns from industry representatives that a number of foreign workers would become ineligible to drive and unable to travel to or from work. Without government intervention, businesses may cease to operate, these drivers may lose their employment and be unable to access essential services, further exacerbating the economic impact of COVID-19. This also acknowledges that a majority of these workplaces are located rurally, with little access to public transport.
- **Improves access and mobility:** The proposed Rule extends the period of eligibility for overseas licence holders to drive in New Zealand. This will enable continued access to the system and travel throughout New Zealand.
- **Protects and promotes public health:** The proposed Rule has little to no impact on the maintenance of road safety in New Zealand. Overseas licence holders will be encouraged to convert to a New Zealand driver licence if they wish to remain in the country and be able to drive, further contributing to ensuring a robust and consistent licensing system.
- **Ensures environmental sustainability:** The proposed amendment is neutral in terms of environmental sustainability.

Costs of implementing the proposed changes: This extension may affect overseas licence conversion revenue that would otherwise have been collected by Waka Kotahi. There is difficulty in assessing the cost impact as an indeterminate quantity of overseas licence holders may have utilised the ability to reset the 12-month period of eligibility through overseas travel.

International considerations: The Rule is consistent with New Zealand's international obligations in respect of land transport.

Consultation on proposed Rule changes

The purpose of this publication is to consult on proposed Rule changes.

Consultation on the proposed changes is being carried out to ensure legislation is sound and robust and the Rule development process takes account of the views of, and the impact on, people affected by the proposed changes.

This consultation has two parts:

- this overview, which sets the proposed amendments
- the consultation draft of the proposed Rule

These documents can be found at <https://nzta.govt.nz/registration-of-interest-in-land-transport-rules/>

Please read the overview carefully and consider the effects the proposed Rule changes would have on you or your organisation.

Subject to the approval of the Minister, the proposed Rule changes are expected to come into effect in December 2020.

What are we seeking your feedback on?

Waka Kotahi welcomes your comments on the proposed changes set out in this overview and in the draft of the proposed Rule.

When you provide your feedback, it would be helpful if you consider and comment on the following:

- What impact would the proposals have, and on whom? Waka Kotahi is particularly interested in your comments on any costs (to you or to your organisation) of implementing the proposals.
- Would any groups or individuals be disadvantaged by the proposals, and how?
- Would any groups or individuals benefit from the proposals, and how?
- Are there any implementation or compliance issues that would need to be considered?

Wherever possible, please provide examples to illustrate your point.

How the proposed Rule change will fit with other legislation

Section 154 (Rules concerning driver licensing) in the Act provides a list of requirements which this Rule may address. This is supported by general powers around rule-making (section 152) and a description of procedures by which the Minister makes ordinary Rules (section 161).

Land Transport Rules do not contain offences and penalties for breaches of Rule requirements. These provisions are set out in regulations. Penalties for drivers that do not convert and become unlicensed will remain, drivers would be subject to infringement fees of \$400 or a fine of up to \$1,000 if caught driving while unlicensed.

The Land Transport (Driver Licensing) Rule 1999 provides the restriction on the period of eligibility to drive for overseas licence holders, before requiring the need to convert to a New Zealand licence.

There are no changes to fees and charges.

Publication and availability of Rules

Access to consultation material

This consultation document is available online at <https://nzta.govt.nz/consultations/>

Availability of Rules

The Rules are available online at <https://nzta.govt.nz/rules/>

If you would like to inspect a hard copy of the Rules free of charge, please visit the Waka Kotahi office at the following address:

50 Victoria Street
Wellington Central
Wellington 6011

Information about Rules

Further information about Rules and the Rule-making process is available online at <https://nzta.govt.nz/resources/rules/about>

If you have not registered your interest in Land Transport Rules, you can do so by contacting Waka Kotahi at:

<https://nzta.govt.nz/registration-of-interest-in-land-transport-rules/>

MAKING A SUBMISSION

If you wish to make a submission on the proposed changes, please read the information below.

Before making your submission

Please read the information provided in this overview and the consultation draft of the Proposed Rule.

Please include the following information in your submission

- The title of the proposed Rule change
- Your name, and title if applicable
- Your organisation's name if applicable
- Your email address (preferred) or postal address

Sending your submission

You can send your submission via the online submission form or by email to rules@nzta.govt.nz. The online submission form is available at www.nzta.govt.nz/temporary-overseas-licence-extension-rule

Please note the deadline for submissions

The deadline for submissions is 5pm on Monday 9 November 2020.

Your submission is public information

Please note your submission may become publicly available. Waka Kotahi may publish any information you submit and may identify you as the submitter should it publish your submission or provide it to a third party.

Please therefore clearly indicate if your comments are commercially sensitive or, if for some other reason, they should not be disclosed, or the reason why you should not be identified as the submitter. Any request for non-disclosure will be considered in terms of the *Official Information Act 1982*.

WHY ARE RULE CHANGES BEING PROPOSED?

Under clause 88 of the Land Transport (Driver Licensing) Rule 1999, all overseas driver licence holders who hold a current and valid licence are allowed to drive in NZ for up to 12 months from the date of their last arrival. This is in line with obligations under the 1949 United Nations Convention on Road Traffic. At the end of 12 months, all overseas licence holders are required to convert their licence to a NZ licence if they wish to continue driving.

Pre-COVID-19, many overseas licence holders would travel overseas at some stage within the 12-month period and then return to New Zealand. This would effectively 'restart the clock' on this requirement and allow overseas licence holders to continue to drive with an overseas licence for a further 12-month period.

Due to COVID-19 border restrictions, a number of overseas driver licence holders are unable to travel home and are required to convert to a NZ licence. The process for converting to a NZ licence differs by exempt and non-exempt countries.

- *Exempt countries:* If the driver is from an exempt country and has held that licence for two years, they may not be required to sit any theory or practical tests depending on the class of licence. Waka Kotahi has assessed the driver licensing system of the host country is of comparable standards to New Zealand. Drivers from exempt countries may pay only a conversion fee if no tests are required¹.
- *Non-exempt countries:* If the driver is from a non-exempt country, they must apply for a conversion at a specialist overseas conversion site. They are required to:
 - fill out an application form
 - present evidence of their identity
 - prove their eyesight meets the required standard
 - provide a medical certificate (if required)
 - present their overseas licence
 - let the agent take their photo and signature
 - pay the application fee
 - provide high-quality, colour photocopies of the original documents they have provided
 - pass a theory (e.g. Class 1L) test
 - if the application is approved, the driver must then pass a practical (e.g. Class 1F) test. In the time period between the driver passing their theory test and passing their practical test, they are only able to drive with a supervisor in the car, and can no longer use their overseas licence.

Because of the extensions granted through the Land Transport Rule: COVID-19 Response (No 1) 2020 and further Level 3 restrictions in Auckland in August, there is a system capacity issue which has impacted on the ability to undertake both counter-based applications and any required theory or practical tests for all driver licences.

Waka Kotahi has increased resources to accommodate those currently trying to convert their overseas driver licence. The proposed Rule will help manage the numbers and flow of applicants to the system, reduce bottlenecks in processing times, and provide people with more time to apply and progress their licence change.

¹ Exempt countries include Australia, Canada, the United States of America, the United Kingdom, Hong Kong, Japan, South Korea, South Africa, and the majority of the European Union.

WHAT CHANGES ARE PROPOSED?

The proposal is to temporarily extend some overseas licences holders' eligibility to drive in New Zealand. This will:

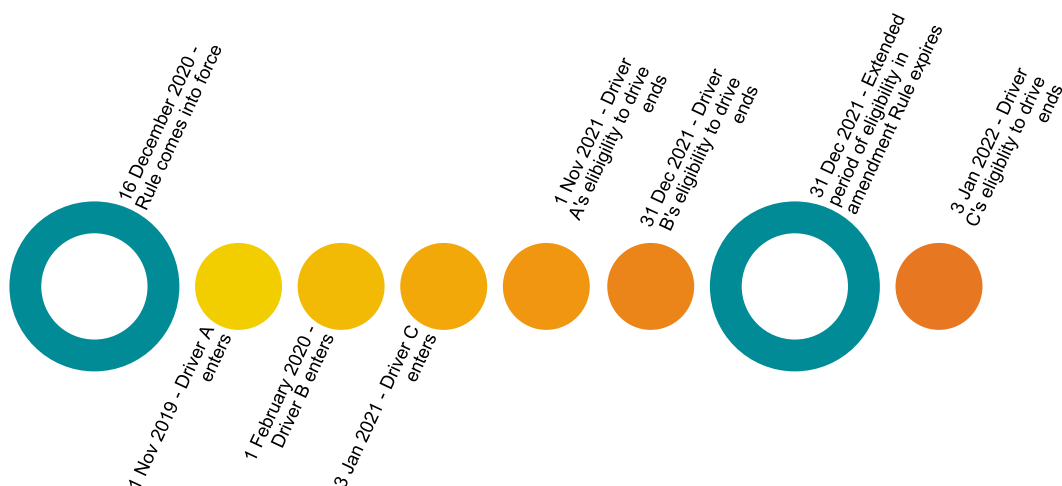
- mitigate any potential influx of applicants to the driver licensing system
- prevent any potential adverse social or economic outcomes on overseas driver licence holders and/or their employers
- allow counter-based transactions and testing services to operate at a manageable level.

The extension will enable eligible drivers to drive for up to 24 months in total (rather than 12) from their date of arrival into NZ on their overseas licence.

The extended eligibility period will be in place until 31 December 2021. After this time, the proposed Rule would expire, and the eligibility period would revert back to 12 months.

This will mean for overseas licence holders who entered New Zealand after 1 January 2019 and before 16 December 2020, whose 12-month eligibility period has ended or is due to end, will gain a further 12 months from the point of the original eligibility period expiring. If an overseas licence holder enters New Zealand after the proposed Rule comes into force, once the Rule expires, the overseas licence holder will revert to the original 12-month period of eligibility.

Figure 1: Proposed Rule eligibility timeline



Driver A: entered New Zealand on 1 November 2019. Without the rule amendment, their eligibility period would expire on 1 November 2020. If the rule amendment comes into force on 16 December 2020, they will not be able to drive on their overseas licence from 1 November 2020 to 16 December 2020. However, from 16 December 2020, they would be able to drive on their overseas licence until 1 November 2021 (i.e. 24 months from their arrival into New Zealand). Once the extended eligibility period in the amendment Rule expires, they would no longer be able to drive on their overseas licence.

Driver B: entered New Zealand on 1 February 2020. Without the rule amendment, their eligibility period would expire on 1 February 2021. If the rule amendment comes into force on 16 December 2020, they would be able to drive on their overseas licence until 31 December 2021. 24 months from 1 February 2020 is 1 Feb 2022, which is beyond the date that the rule expires, so the period of eligibility to drive ends on 31 December 2021.

Driver C: enters New Zealand on 3 January 2021. Because they will enter New Zealand outside of the time period specified in the rule amendment (arrive in New Zealand after 1 January 2019 and before 16 December 2020), the rule does not apply to them. They will only be eligible to drive on their overseas licence until 3 January 2022 (i.e. 12 months from their arrival into New Zealand).

The following temporary visa holders will be eligible for the proposed Rule's temporary extension:

- Visitor visa
- Work visa (e.g. essential skills or working holiday)
- Limited visa
- Student visa
- Special temporary visa (e.g. diplomatic staff)
- Military visa

New Zealand residents or Australian citizens (treated as New Zealand residents) will not be eligible. For the most part, these visa holders have normally re-located to New Zealand permanently and are encouraged to convert to a New Zealand driver licence to formally enter the Driver Licensing Register.

If a temporary visa holder's status changes e.g. an application for New Zealand residency is successful, they will cease to be eligible for the extension and must convert to a New Zealand driver licence.

Once the extended eligibility period in the amendment Rule expires, overseas licence holders who are expecting/intending to remain in New Zealand will be required to convert their overseas licence to a New Zealand driver licence. If an overseas licence holder does not convert their licence and continues to drive, they could face a penalty for the first offence of driving with an expired driver licence of \$400 infringement fee under section 31(1)(a) of the Act. A second or subsequent offence has a maximum fine on conviction of up to \$1,000.

Road safety

The proposed Rule will not present a significant risk to road safety. Based on road safety data, held by Waka Kotahi in the Crash Analysis System, overseas licence holders represent a small proportion of overall crash statistics, being at fault in around 4% of all crashes. This figure has remained consistent over the past decade, despite the 45% increase in international visitors.

There are also a number of specialist vehicles that overseas licence holders cannot drive without a current NZ licence (and additional training where required), which also helps mitigate any potential road safety risks. This includes any vehicles that require endorsements, such as taxis, forklifts, buses, or when transporting dangerous goods (for example petrochemicals). Endorsements are only available to drivers that carry a valid New Zealand driver licence and have met the relevant requirements. For example, a dangerous good endorsement holder will need to pass a course prior to applying to Waka Kotahi.

Roadside enforcement

Waka Kotahi maintains the Driver Licence Register (the Register), which holds information on all New Zealand driver licences, including traffic offence history. New Zealand Police (Police) have access to the Register for enforcement purposes under schedule 4 of the *Privacy Act 2020*².

Until an overseas licence is converted, information on an overseas driver is not available in the Register. Instead, a separate licence record for the driver is created by Police. This enables Police to track, record and act against any traffic offences (including demerits) that overseas drivers may incur and can revoke or suspend a temporary visa holder's eligibility to drive if needed. Traffic offence history will be carried over once the driver converts to a New Zealand driver licence.

² And, until 1 December 2020, under Schedule 5 of the Privacy Act 1993.

Converting to a New Zealand licence

Exempt countries³

In administering the driver licensing system, Waka Kotahi has agreements with overseas jurisdictions allowing drivers to easily transfer/move between driver licensing systems. These countries are categorised as 'exempt countries' as they have been assessed by Waka Kotahi as having comparable driver licensing and testing systems to New Zealand.

This means if the driver is from an exempt country and has held that licence for two years, they may not be required to sit any theory or practical tests depending on the class of licence. Waka Kotahi has assessed the driver licensing system of the host country is of comparable standards to New Zealand. Drivers from exempt countries may need to pay only a conversion fee if no tests are required⁴. If the licence has been held for less than two years, the applicant either needs to provide documentation from the licensing authority to confirm it has been held for more than two years or the applicant can sit a practical New Zealand test instead.

Non-exempt countries

If an overseas licence holder is from a non-exempt country, a practical and theory test must be passed before a driver can convert to a NZ licence. An application is made at a specialist overseas conversion site, which is then sent to Waka Kotahi to be assessed. At this point, Waka Kotahi confirms the identity of the applicant and once approved, the applicant is sent a New Zealand driver licence with a supervisor condition (similar to the Class 1L) and the applicant can book a practical test. Once passed, the applicant is sent a Class 1F licence.

Current situation

Once an overseas licence holder from a non-exempt country has applied to convert to a New Zealand driver licence and passed a theory test, a unique licence number is assigned. At this point, the driver can no longer drive on their overseas licence. They become subject to New Zealand learner licence conditions, including only being able to drive with a supervisor who holds a current full New Zealand driver licence, for a period of two or more years. Unless agreed to by the supervisor, there is no ability to carry passengers.

Waka Kotahi is also seeking feedback through this consultation process on whether a further change is required to allow an overseas licence holder to continue to drive on their overseas licence until they successfully pass a practical test to gain a Class 1F licence. This reflects the intent of the proposed Rule, to both enable overseas licence holders to continue to be eligible to drive in New Zealand and to provide sufficient time for those wishing to convert.

Questions

For all questions, reasoning behind the response would be appreciated:

1. Should the eligibility period for overseas licence holders be extended?
2. Should this apply to any other visa type, aside from temporary visa holders?
3. Are there any potential issues with the inclusion of Class 2 to 5 licences?
4. Do you agree with the proposed eligibility timeframe (Enter after 1 January 2019 and arrive before 16 December 2020)?
5. Is there a need to clarify the ability to continue to drive on an overseas licence once an application to convert to a New Zealand licence has been made?

³ See appendix 1 for a flowchart on the conversion process

⁴ This process applies to Class 1 or 6 only, a different process applies for the conversion of a heavy vehicle (class 2-5) licence.

Appendix 1: Current process to convert a New Zealand driver licence (non-exempt)

