

## 20. Traffic Violations and Immunity

### 20.1 General

The operation of a motor vehicle by anyone in New Zealand, including persons with diplomatic or consular status, is not a right but a privilege. While the vast majority of foreign representatives and accredited family members observe traffic laws and regulations, those driving practices and violations of traffic laws which endanger public safety are of serious concern to the Government of New Zealand.

The New Zealand authorities treat seriously all cases involving violations of traffic and driving laws and regulations, including in respect of motor vehicle registration, licensing and roadworthiness. All staff of missions and posts on assignment in New Zealand are required to comply fully with these laws and regulations. This is in accordance with Article 41 of VCDR and Article 55 of the VCCR which requires all members of the corps to respect the laws and regulations of the receiving state.

The Government of New Zealand instructs its own representatives abroad to conduct themselves with the foregoing expectations in mind. They are explicitly required by the Code of Conduct of MFAT to pay parking fines promptly and to meet their responsibilities in the case of traffic accidents or offences without resting on immunity.

### 20.2 Local Licensing

A motor vehicle is required to be validly licensed at all times; all vehicles are required to hold a valid Warrant of Fitness; all vehicles should be appropriately insured; and it is compulsory for every person to have in their possession while driving a valid driver's licence.

### 20.3 Traffic Offences

Special licence plates issued to accredited foreign representatives do not prohibit a police officer from initiating a traffic stop in a manner consistent with normal police procedures. Accredited persons who have been signalled to stop their vehicle by a police officer should do so and be prepared to present identification to the attending officer, including a valid driver's licence and the Identity Card issued by Protocol Division.

Police, other enforcement officers and parking wardens may issue fines for minor traffic and vehicle related offences where the officer has evidence to support such an action, including for speeding and parking offences. It is expected that parking and speeding fines will be paid by foreign representatives and foreign missions.

Where an individual who is immune from local jurisdiction chooses to contest a ticket before a court, MFAT requires that the relevant mission provides the appropriate waiver of immunity to MFAT in writing.

In cases where personal vehicles are registered to an official address, it is still important to respond appropriately to correspondence from the Police or Ministry of Transport, as delays in responding to such notices may lead to the suspension of driving privileges. It should also be noted that MFAT will not intervene in cases where such measures have been enacted due to outstanding or accumulated fines.

Where a driving offence has been committed which is also a serious crime with a penalty of a term of imprisonment of 12 months or more, the offence will be treated as a serious crime and, if prosecution is warranted, a waiver of immunity will be sought.

For other driving offences which do not meet the threshold of a serious crime, MFAT, in consultation with the New Zealand Police, will determine whether a waiver of immunity should be sought to ensure public safety and to enable prosecution of the individual concerned. In the event that the requested waiver of immunity is declined, MFAT in consultation with Police will seek appropriate alternative remedies to ensure public safety. This may include seeking the withdrawal of the individual concerned.

The Protocol Division does not expect to be asked to intervene with local authorities to seek the cancellation of traffic violation notices. Should a mission/post or an officer wish to contest the facts that form the basis of a particular traffic violation notice, they are invited to raise the matter with the relevant local authorities. The view of the New Zealand authorities is that driving *per se* is not an 'official act' within the meaning of the Vienna Conventions and that traffic violations, including for parking and speeding offences, cannot be regarded as forming part of the performance of official duties, even in the most exceptional circumstances.

#### **20.4 Unpaid Fines**

If a person fails to pay a fine, the matter will be referred to the Court and acted upon *in absentia*, incurring additional court costs. If, exceptionally, it is the declared intention of a person with immunity not to pay a traffic violation fine, MFAT expects the Head of Mission/Post to provide the Chief of Protocol with a full explanation. Repeated instances may lead to further action.

NB: Should an infringement notice be issued, liability for the offence has been accepted once the fine has been paid, and a subsequent request to have the fine removed from the records will be declined. Should a person wish to file a statutory oath or declaration denying liability for an offence, this must be submitted before any fine is paid.

#### **20.5 Parking**

All members of the diplomatic and consular community are required to observe parking regulations. Failure to do so can cause inconvenience, traffic disruption and danger to other road users.

##### 20.5.1 Vehicles Parked Unlawfully

Any vehicles (including DC/CC/FC vehicles) that are unlawfully parked or found to be causing obstruction or danger to other road users may be towed away by the Police or a local authority (or their agent). The owners of private car parks have a right to arrange for the removal of cars parked unlawfully on their property. A fee must be paid by the owner of the car before the car can be released.

Diplomatic/consular/administrative and technical staff licensed vehicles are expected to observe the normal rules regarding clearways, "no parking" areas and parking metres. If such vehicles do not observe these rules the competent authorities will issue appropriate traffic infringement notices.

##### 20.5.2 Parking in Wellington

The Wellington City Council, after consultation with MFAT, has provided a number of DC, CC and FC parking spaces around the central city in areas near missions where traffic is dense and kerbside parking is crowded. These parking spaces are provided to enable members of the Corps to make official calls and carry out other official business requiring the use of a vehicle.

No parking places are allocated specifically to individual missions, nor is it intended that these parking places be used as all-day parking.

## **20.6 Breath Testing**

Driving a motor vehicle while under the influence of alcohol or drugs is considered to be a very serious offence in New Zealand. Penalties for these types of offences are severe.

Police have the authority to stop any motor vehicle and request the driver to undertake a breath-screening test. Any request to stop by a police officer must be obeyed.

### 20.6.1 Request to Undertake Breath Testing

#### **Diplomatic/Consular/Official Staff**

A police officer may request the driver of a diplomatic/consular/consular/official staff licensed motor vehicle to undertake a breath-screening test. Drivers who can provide evidence of full diplomatic status by producing a valid identity document may either agree to, or refuse, the police request. However, the view of the New Zealand authorities is that the public image of the country and mission/post concerned will be greatly enhanced if individuals with full diplomatic status agree to breath-screening tests without invoking immunity.

If a breath-screening test is taken and is negative, that is the end of the matter. If a breath-screening test is taken and is positive (i.e. alcohol consumption in excess of the statutory limit), or a breath-screening test is refused, the police authorities are under no obligation to allow the driver to continue to drive if, in their judgement, to do so poses a danger to the public. In the interests of the public and the driver's safety, the police authorities may assist by making arrangements for the driver to get to their destination or a driver may be requested to take an alternative means of transport.

Some missions provide staff who have full diplomatic status with a letter stating the holder is not permitted to undergo breath-screening tests. The Police will recognise such a letter only if the holder is able to independently establish their diplomatic status. Protocol Division should be advised by missions which of their staff hold such letters. If a driver is unable to provide evidence of their status by producing a valid identity document, the police request to submit to a breath-screening test cannot be refused and the police authorities will have no choice but to proceed with this test.

If this initial screening test indicates a reading in excess of the statutory limit, the police may request that the driver submit to an evidential breath test and/or escort the driver to the local police station. They will then arrange for the relevant authorities to be contacted to establish status.

If a person with diplomatic/consular/official status refuses to be breath-tested and there are reasonable grounds for believing that an offence involving driving under the influence of alcohol has been committed, a police report will be provided to MFAT for further action in accordance with New Zealand Government policy on diplomatic immunity.

#### **Consular Officials**

The policy of MFAT is that consular staff are expected to undergo a breath test if requested by a police officer.

Consular officers, unlike diplomatic officers, have immunity only in respect of acts performed in the exercise of their consular functions. It is the view of the New Zealand authorities that driving a motor vehicle under the influence of alcohol or drugs is outside the scope of consular functions and is not subject to the exercise of immunity.

Failure to comply with a request to undergo a breath test is failure to respect and comply with the law (Article 55 of the VCCR refers). A consular officer, in refusing a breath test, would not be arrested but could be charged and

summonsed to appear before a Court and would be required to appear. The Court would decide whether or not the charge relates to acts outside the official functions.

Family members of consular officers have no immunity and may, if the circumstances warrant, be summonsed, arrested or detained. Honorary Consuls and Consular Employees likewise may also be summonsed, arrested or detained.

#### **20.7 Repeat or Serious Traffic Violations**

MFAT will inform Heads of Missions/Posts of any serious traffic violations and outstanding fines involving diplomatic/consular/official staff and their family members if advised by authorities.

Anyone who infringes New Zealand traffic laws accrues demerit points, and anyone who accrues 100 demerit points within two (2) years will have their licence suspended for three (3) months.

Repeated offences or serious offences by foreign representatives could result in consideration being given to seeking a waiver of immunity to prosecute, requiring surrender of a driver's licence, and/or cancellation of vehicle registration or possible withdrawal of the individual from New Zealand.

