

CAYMAN ISLANDS



IMMIGRATION (TRANSITION) (AMENDMENT) BILL, 2021

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A BILL FOR AN ACT TO AMEND THE IMMIGRATION (TRANSITION) ACT (2021 REVISION) IN ORDER TO PROVIDE IN CERTAIN CIRCUMSTANCES FOR MANDATORY VACCINATION; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Border Control and Labour (BCL)



Memorandum of OBJECTS AND REASONS

The Immigration (Transition) (Amendment) Bill, 2021 seeks to amend the Immigration (Transition) Act (2021 Revision) (the “principal Act”) in order to provide that certain categories of persons will be mandated, among other things, to provide a vaccination certificate which shows that the person in respect of whom the certificate is issued was administered an approved vaccine course used to prevent the spread of any notifiable disease under the Public Health Act (2021 Revision).

Clause 1 provides the short title to the Bill and the commencement provision.

Clause 2 amends section 2 of the principal Act to provide definitions for “**approved vaccine course**”, “**medical certificate**”, “**Medical Officer of Health**” and “**vaccination certificate**”.

Clause 3 inserts a new section 52A and 52B. Clause 52A provides that any person to whom certain sections in Part 6 of the principal Act apply shall provide the Board or the Director of WORC, as applicable, with —

- (a) a vaccination certificate relating to that person and any dependant of that person when that person applies to be granted the right to be employed or to reside in the Islands or for the renewal of such right;
- (b) in the case of a person and any dependant of that person who has been vaccinated with a vaccine course which is not an approved vaccine course, a declaration signed by the person that the person and any dependant of the person will comply with any directions of the Medical Officer of Health given with regard to vaccination; or
- (c) in the case of an unvaccinated person, a declaration signed by the person that the person and any dependant of the person will complete an approved vaccine course —
 - (i) within forty days after an application is granted;
 - (ii) within forty days after arrival in the Islands, if the person does not reside in the Islands; or
 - (iii) within such other period of time as is directed by the Medical Officer of Health, or

and comply with any directions of the Medical Officer of Health given with regard to completing an approved vaccine course.



The relevant sections are as follows —

Section	Description of section
37	Persons legally and ordinarily resident in the Islands for at least eight years
38	Residency and Employment Rights Certificate for spouse or civil partner of a Caymanian
39	Dependants of Residency and Employment Rights Certificate holders
40(2) and (3)	Loss of Residency and Employment Rights Certificate (applicants are spouse, partner or surviving spouse or partner of a Caymanian who have forfeited rights under section 40(1))
41	Residency Certificate for Persons of Independent Means
42	Certificate of Permanent Residence for Persons of Independent Means
43	Spouse or civil partner and dependants of the holder of a Residency Certificate for Persons of Independent Means or a Certificate of Permanent Residence for Persons of Independent Means
47	Certificate of Direct Investment; and
50	Residency Certificate (Substantial Business Presence)

Clause 3 also provides that —

- (a) where a Residency Certificate for Persons of Independent Means is varied under section 44(2) by the Director of WORC, in the case where the variation relates to adding a dependant under the certificate, the Director may only vary it if the holder of the certificate provides the Director with a vaccination certificate or a declaration as described above; and



- (b) an employer or former employer who applies under section 49 of the principal Act for a Certificate for Specialist Caregivers for an employee or for a former employee shall, at the time of making the application, provide the Board or the Director of WORC, as applicable, with a vaccination certificate relating to that employee or former employee or a declaration as described above.

The effect of the list enumerated in the new section 52A(2) of the Bill will be that the following categories of persons will be subject to the requirement to provide the Board or the Director of WORC with a vaccination certificate or declaration at the time of making their application —

- persons who have been legally and ordinarily resident for eight years (section 37 of the principal Act);
- the spouse or civil partner of a Caymanian who applies for an Residency and Employment Rights Certificate (“RERC”) (see section 38(1) of the principal Act);
- dependents of RERC holders who have reached the age of 18 and apply for permanent residence in their own right (see section 39(1) of the principal Act);
- parents of Caymanian children whose marriage/civil partnership has dissolved – section 40(2) of the Act provides for a person who has forfeited their right to an RERC but who is the parent of a Caymanian child, to apply for a continuation of their RERC until the child reaches 18, or later if the child is in tertiary education;
- surviving spouses/civil partners - section 40(3) of the Act provides for an RERC holder who is the surviving spouse or civil partner of a Caymanian to be able to apply to the Board / the Director of WORC for the right to continue to hold their certificate;
- persons of independent means who apply for a Residency Certificate for Persons of Independent Means (valid for 25 years and subject to renewal) (see section 41(1) of the principal Act);
- persons of independent means who apply to reside permanently in the Cayman Islands (see section 42(1) of the principal Act);
- surviving or former spouses or civil partners of those who hold a Residency Certificate for Persons of Independent Means or a Certificate of Permanent Residence for Persons of Independent Means and who have applied for the grant of such a certificate/permanent residency in their own right (see section 43(3) of the principal Act);
- dependents of persons who hold a Residency Certificate for Persons of Independent Means or a Certificate of Permanent Residence for Persons of Independent Means where the dependent has reached the age of 18 and applied for permanent residence in their own right under section 37 of the Act (see section 44(3) of the principal Act);

- persons who have applied for a Certificate of Direct Investment (see section 47(1) of the Act) and the surviving/former spouse or civil partner of a Certificate of Direct Investment holder who has apply for such a certificate in their own right (see section 47(7) of the principal Act);
- a person who applies for a Certificate for Specialist Caregivers for that person's employee/former employee (renewable for a period of 5 years) (see section 49 of the principal Act); and
- an applicant for a Residency Certificate on the basis of substantial business presence (valid for 25 years and subject to renewal) (see section 50(1) of the principal Act).

While vaccination certificates for dependants must be provided, the amendments will not apply to dependants who are not eligible for vaccination under the Public Health Act (2021 Revision) or to those persons for whom medical certificates are provided which certify that vaccination would be injurious to the health of the person or a dependant of the person.

Clause 3 also inserts a new section 52B which provides, among other things, that a person under section 52A, 53A, 56, 63 and 66 is not required to provide a vaccination certificate, medical certificate or a declaration where the Medical Officer of Health grants an exemption to the person or the dependant of the person from the requirement to provide such vaccination certificate, medical certificate or declaration on the grounds that an emergency situation or an exceptional circumstance exists.

Clause 4 amends section 53 of the principal Act to provide for minor amendments to that section which are consequential to the amendments proposed in clause 5.

Clause 5 inserts a new section 53A which provides that a person to whom section 53(1)(b) applies and who is not to be employed by any person in the Islands but who will be employed and reside in the Islands, upon the date of arrival in the Islands, shall provide the Director of WORC with a vaccination certificate or a declaration relating to that person and to any dependant of that person.

Further —

- (a) a prospective employer of a person specified in section 53(1)(b) who is to be employed under a contract; and
- (b) the employer of a person whose contract is subject to renewal, prior to finalising such contract or a renewal of a contract, shall provide the Director of WORC with a vaccination certificate or declaration relating to the person to whom the contract applies and relating to any unvaccinated dependant of that person.

Section 53(1)(b) deals with any person who may be declared by the Cabinet to be exempt for any purpose either unconditionally or subject to such conditions as may be prescribed. This new section 53A, like section 53, falls under Part 7 which deals with the gainful employment of non-Caymanians and their dependants.



The similar exemption above relating to the provision of a medical certificate applies.

Clause 6 amends section 56 of the principal Act to provide that applications for the grant or renewal of work permits must be accompanied by vaccination certificates or declarations relating to the persons to whom the applications apply and the dependants of those persons.

Clause 7 amends section 63 of the principal Act to provide that where an employer or worker applies for the variation or modification of a work permit under subsection (7) of that section, and the variation or modification relates to the addition of a dependant under the work permit, the employer or the worker shall provide Board or the Director of WORC, at the date of application, with a vaccination certificate relating to the dependant of the worker or a declaration as described above.

Clause 8 amends section 66 of the principal Act to provide that where a person applies under subsection (4) of that section for permission to continue working during an application for permanent residence the Director of WORC, when adding a dependant to the work permit, must be provided with a vaccination certificate or a declaration relating to that dependant.

Clause 9 amends section 72 of the principal Act to provide that regulations can provide for any thing or matter relating to the mandatory vaccination of persons under the legislation.

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A BILL FOR AN ACT TO AMEND THE IMMIGRATION (TRANSITION) ACT (2021 REVISION) IN ORDER TO PROVIDE IN CERTAIN CIRCUMSTANCES FOR MANDATORY VACCINATION; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

- (1) This Act may be cited as the Immigration (Transition) (Amendment) Act, 2021.
- (2) This Act comes into force by Order made by the Cabinet.

Amendment of section 2 of the Immigration (Transition) Act, 2021 Revision - interpretation

- The *Immigration (Transition) Act (2021 Revision)*, in this Act referred to as the “principal Act”, is amended by inserting the following definitions in the appropriate alphabetical sequence —

“**approved vaccine course**” means a vaccination course which is approved in accordance with the *Public Health Act (2021 Revision)* to prevent or suppress any notifiable disease under Part 6 of the *Public Health Act (2021 Revision)*;

“**medical certificate**” means a certificate which certifies that vaccination would be injurious to the health of a person who is eligible to be vaccinated in accordance with the *Public Health Act (2021 Revision)* and which is —

- (a) in the case of a person who is applying to land in or enter into the Islands, signed by a medical doctor in the person’s country;
- (b) in the case of a person who resides in the Islands and who is applying to remain in the Islands, signed by a registered medical practitioner who is a medical doctor referred to under Schedule 4 of the *Health Practice Act (2021 Revision)*; and
- (c) approved by the Medical Officer of Health;

“**Medical Officer of Health**” has the meaning assigned by section 2 of the *Public Health Act (2021 Revision)*;

“**registered medical practitioner**” means a person registered to practise medicine under the *Health Practice Act (2021 Revision)*; and

“**vaccination certificate**” means a document which evidences that the person in respect of whom the document is issued was administered an approved vaccine course no later than fourteen days before an application is made under this Act in respect of such person;”.

Insertion of sections 52A and 52B - mandatory vaccinations for persons specified under Part 6 and exemptions by the Medical Officer of Health

3. The principal Act is amended by inserting after section 52 the following sections —

“Mandatory vaccinations for persons specified under Part 6

52A.(1) Subject to subsection (5) and section 52B, any person to whom the sections specified in subsection (2) apply, shall provide the Board or the Director of WORC, as applicable, with —

- (a) a vaccination certificate relating to that person and any dependant of that person when that person applies to be granted the right to be employed or to reside in the Islands or for the renewal of such right;
- (b) in the case of a person and any dependant of that person who has been vaccinated with a vaccine course which is not an approved vaccine course, a declaration signed by the person that the person and any dependant of the person will comply with any directions of the Medical Officer of Health given with regard to vaccination; or



- (c) in the case of an unvaccinated person, a declaration signed by the person that the person and any unvaccinated dependant of the person will —
 - (i) complete an approved vaccine course and provide a vaccination certificate to the Board or the Director of WORC, as applicable —
 - (A) within forty days after an application is granted or renewed;
 - (B) within forty days after arrival in the Islands, if the person does not reside in the Islands; or
 - (C) within such other period of time as is directed by the Medical Officer of Health; or
 - (ii) comply with any directions of the Medical Officer of Health given with regard to vaccination.
- (2) The sections to which subsection (1) relates are as follows —
 - (a) 37;
 - (b) 38;
 - (c) 39;
 - (d) 40(2) and (3);
 - (e) 41;
 - (f) 42;
 - (g) 43;
 - (h) 47; and
 - (i) 50.
- (3) Subject to subsection (5) and section 52B, where a Residency Certificate for Persons of Independent Means is varied under section 44(2) by the Director of WORC, in the case where the variation relates to adding a dependant under the certificate, the Director of WORC may only vary it if the holder of the certificate provides the Director of WORC with a vaccination certificate or a declaration specified under subsection (1)(b) or (c) that relates to the dependant.
- (4) Subject to subsection (6) and section 52B, an employer or former employer who applies under section 49 for a Certificate for Specialist Caregivers for an employee or for a former employee shall, at the time of making the application, provide the Board or the Director of WORC, as applicable, with —
 - (a) a vaccination certificate relating to that employee or former employee;

- (b) in the case of an employee or former employee who has been vaccinated with a vaccine course which is not an approved vaccine course, a declaration signed by the employee or former employee that the employee or former employee will comply with any directions of the Medical Officer of Health given with regard to vaccination; or
 - (c) in the case of an unvaccinated employee or former employee, a declaration signed by the person that the person will —
 - (i) complete an approved vaccine course and provide a vaccination certificate to the Board or the Director of WORC —
 - (A) within forty days after an application is granted or renewed;
 - (B) within forty days after arrival in the Islands, if the person does not reside in the Islands; or
 - (C) within such other period of time as is directed by the Medical Officer of Health; or
 - (ii) comply with any directions of the Medical Officer of Health given with regard to vaccination.
- (5) Subsections (1) and (3) do not apply where the person provides a medical certificate which certifies that vaccination would be injurious to the health of the person or a dependant of the person.
- (6) Subsection (4) does not apply where the employer or former employer provides a medical certificate which certifies that vaccination would be injurious to the health of the relevant employee or former employee.
- (7) An application under any of the sections specified in subsection (2) or (4) shall not be considered by the Board or the Director of WORC if the application is not accompanied by a vaccination certificate, a declaration, a medical certificate or an exemption granted under section 52B.
- (8) Where a person or a person’s dependant fails to be vaccinated in accordance with a declaration or to comply with any directions of the Medical Officer of Health, a certificate which was granted to that person shall be revoked by the Board or by the Director.
- (9) In this section and in sections 53A, 56, 63 and 66, the word “**dependant**” means a dependant who is eligible from time to time to be vaccinated in accordance with the *Public Health Act (2021 Revision)*.



Exemptions by the Medical Officer of Health

- 52B.**(1) A person referred to under section 52A, 53A, 56, 63 and 66 is not required to provide a vaccination certificate, a declaration or a medical certificate where the Medical Officer of Health grants an exemption to the person or the dependant of the person from the requirement to provide such vaccination certificate, declaration or medical certificate on the grounds that an emergency situation or an exceptional circumstance exists.
- (2) A person who is exempted in accordance with subsection (1) shall comply with any conditions imposed by the Medical Officer of Health when granting an exemption.
- (3) Where the Medical Officer of Health exempts a person in accordance with subsection (1), the Medical Officer of Health shall notify the Cabinet of —
- (a) the grant of the exemption;
 - (b) the nature of the exemption; and
 - (c) the person to whom the exemption has been granted.
- (4) The Medical Officer of Health, at least once every three months, shall provide the Cabinet with a report on any exemptions granted under this section.
- (5) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for two years, or to both.”.

Amendment of section 53 - persons exempted

4. The principal Act is amended in section 53(1) as follows —
- (a) in the chapeau, by deleting the word “This” and substituting the word “this”; and
 - (b) in the chapeau, by inserting before the word “this” as amended the words “Subject to section 53A,”.

Insertion of section 53A - mandatory vaccinations for persons under section 53(1)(b)

5. The principal Act is amended by inserting after section 53 the following section —

“Mandatory vaccinations for persons specified in section 53(1)(b)

- 53A.**(1) Subject to any other law and subsection (4), a person to whom section 53(1)(b) applies and who is not to be employed by any person in the Islands but who will be employed and reside in the Islands, at the time of making an application to reside in the Islands shall provide the Director of WORC with —

- (a) a vaccination certificate relating to that person and to any dependant of that person;
 - (b) in the case of a person and any dependant of that person who has been vaccinated with a vaccine course which is not an approved vaccine course, a declaration signed by the person that the person and any dependant of the person will comply with any directions of the Medical Officer of Health given with regard to vaccination; or
 - (c) in the case of an unvaccinated person, a declaration signed by the person that the person and any unvaccinated dependant of the person will —
 - (i) complete an approved vaccine course and provide a vaccination certificate to the Director of WORC —
 - (A) within forty days after an application is granted or renewed;
 - (B) within forty days after arrival in the Islands, if the person does not reside in the Islands; or
 - (C) within such other period of time as is directed by the Medical Officer of Health; or
 - (ii) comply with any directions of the Medical Officer of Health given with regard to vaccination.
- (2) Subject to any other law and subsection (3), a prospective employer of a person specified in section 53(1)(b) who is to be employed in the Islands under a contract and the employer of a person whose contract is subject to renewal, prior to finalising such contract or a renewal of a contract, shall provide the Director of WORC with —
- (a) a vaccination certificate relating to the person to whom the contract applies and to any dependant of that person;
 - (b) in the case of a person and any dependant of that person who has been vaccinated with a vaccine course which is not an approved vaccine course, a declaration signed by the person that the person and any dependant of the person will comply with any directions of the Medical Officer of Health given with regard to vaccination; or
 - (c) in the case of an unvaccinated person, a declaration signed by the person that the person and any unvaccinated dependant of the person will —
 - (i) complete an approved vaccine course and provide a vaccination certificate to the Director of WORC —



- (A) within forty days after an application is granted or renewed;
 - (B) within forty days after arrival in the Islands, if the person does not reside in the Islands; or
 - (C) within such other period of time as is directed by the Medical Officer of Health; or
- (ii) comply with any directions of the Medical Officer of Health given with regard to vaccination.
- (3) Subsections (1) and (2) do not apply where —
- (a) the person, the prospective employer or the employer provides a medical certificate which certifies that vaccination would be injurious to the health of the person to whom the contract or renewal of contract applies and to any dependant of that person; or
 - (b) an exemption has been granted to the person under section 52B.
- (4) Where a person or a person’s dependant fails to be vaccinated in accordance with a declaration or to comply with any directions of the Medical Officer of Health, the exemption which is granted to that person under section 53 shall be revoked by Cabinet.”.

Amendment of section 56 - application for work permits

6. The principal Act is amended in section 56 as follows —

- (a) in subsection (4) —
 - (i) in paragraph (a), by deleting the word “and” which appears after the semi-colon;
 - (ii) in paragraph (b), by deleting the full stop and substituting a semi-colon and the word “and” after the semi-colon; and
 - (iii) by inserting after paragraph (b) the following paragraph —
 - “(c) any of the following documents, as applicable —
 - (i) a vaccination certificate relating to the person to whom the application applies and to any dependant of the person;
 - (ii) in the case of a person and any dependant of that person who has been vaccinated with a vaccine course which is not an approved vaccine course, a declaration signed by the person that the person and any dependant of the person will comply with any directions of the Medical Officer of Health given with regard to vaccination; or

- (iii) in the case of an unvaccinated person, a declaration signed by the person that the person and any unvaccinated dependant of the person will —
 - (A) complete an approved vaccine course and provide a vaccination certificate to the Board or the Director of WORC —
 - (AA) within forty days after an application is granted or renewed;
 - (BB) within forty days after arrival in the Islands, if the person does not reside in the Islands; or
 - (CC) within such period of time as is directed by the Medical Officer of Health; or
 - (B) comply with any directions of the Medical Officer of Health given with regard to vaccination.”.
- (b) by inserting after subsection (4) the following subsection —
 - “(4A) Subsection (4)(c) does not apply where —
 - (a) a self-employed person or the prospective employer provides a medical certificate which certifies that vaccination would be injurious to the health of the person to whom the application for the grant or renewal of a permit applies and to any dependant of that person; or
 - (b) an exemption has been granted to the person under section 52B.”; and
- (c) by inserting after subsection (7) the following subsections —
 - (7A) Subject to subsection (4A), an application under this section shall not be considered by the Board or the Director of WORC if the application is not accompanied by a vaccination certificate, a declaration or an exemption.
 - (7B) Where a person or the person’s dependant fails to be vaccinated in accordance with a declaration or to comply with any directions of the Medical Officer of Health, a permit which was granted to that person shall be revoked by the Board or by the Director.”.

Amendment of section 63 - grant or refusal of work permit

7. The principal Act is amended in section 63 by inserting after subsection (7) the following subsections —



- “(7A) Where an employer or worker applies for the variation or modification of a work permit under subsection (7), and the variation or modification relates to the addition of a dependant under the work permit, the employer or the worker shall provide, at the date of application, the Board or the Director of WORC, with —
- (a) a vaccination certificate relating to the dependant of the worker;
 - (b) in the case of a dependant of the worker who has been vaccinated with a vaccine course which is not an approved vaccine course, a declaration signed by the worker that the dependant of the person will comply with any directions of the Medical Officer of Health given with regard to vaccination; or
 - (c) in the case of a n unvaccinated dependant , a declaration signed by the worker that the unvaccinated dependant of the person will —
 - (i) complete an approved vaccine course and provide a vaccination certificate to the Board or the Director of WORC —
 - (A) within forty days after an application is granted or renewed;
 - (B) within forty days after arrival in the Islands, if the person does not reside in the Islands; or
 - (C) within such other period of time as is directed by the Medical Officer of Health; or
 - (ii) comply with any directions of the Medical Officer of Health given with regard to vaccination.
- (7B) Subsection (7A) does not apply where —
- (a) the worker provides a medical certificate which certifies that vaccination would be injurious to the health of the dependant to whom the application applies; or
 - (b) an exemption has been granted to the dependant under section 52B.”.

Amendment of section 66- term limits

8. The principal Act is amended in section 66 as follows —

- (a) by repealing subsections (4) and (5) and substituting the following subsections —
 - “(4) Where a person is eligible to apply and has applied for permission to reside permanently in the Islands under section 37 during the currency of a work permit, the person may apply to the Director of WORC for permission —

- (a) to continue working on the same terms that applied to the work permit or those that applied to that person working by operation of law; or
- (b) to work for a different employer but in the same occupation as that in which that person was authorised to work at the time of making the application; and
- (c) to add or delete a dependant, as applicable,

and such permission may be granted or renewed by the Director of WORC until such time as that person's application or any appeal arising from it is determined.

- (5) Subject to subsection (5A), an application under subsection (4)(c) shall be accompanied by —

- (a) a vaccination certificate relating to the dependant;
- (b) in the case of a dependant of the person who has been vaccinated with a vaccine course which is not an approved vaccine course, a declaration signed by the person that the dependant of the person will comply with any directions of the Medical Officer of Health given with regard to vaccination; or
- (c) in the case of an unvaccinated person, a declaration signed by the person that the person and any unvaccinated dependant of the person will —
 - (i) complete an approved vaccine course and provide a vaccination certificate to the Director of WORC —
 - (A) within forty days after an application is granted or renewed;
 - (B) within forty days after arrival in the Islands, if the person does not reside in the Islands; or
 - (C) within such other period of time as is directed by the Medical Officer of Health; or
 - (ii) comply with any directions of the Medical Officer of Health given with regard to vaccination.

- (5A) Subsection (5) does not apply where —

- (a) the person provides a medical certificate which certifies that vaccination would be injurious to the health of the dependant of the person; or
- (b) an exemption has been granted to the dependant under section 52B.”.



Amendment of section 72 - regulations

9. The principal Act is amended in section 72(2) by inserting after paragraph (h) the following paragraph —

“(ha) provide for any matter or thing relating to the mandatory vaccination of persons under this Act;”.

Passed by the Parliament the day of , 2021.

Speaker

Clerk of the Parliament

