



17 August 2017

**IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2017/10**

**To: All Manual Holders**

**AMENDMENTS TO THE IMMIGRATION NEW ZEALAND OPERATIONAL MANUAL**

**Introduction**

This circular outlines changes to immigration instructions. A copy of the amended instructions is attached.

All immigration officers dealing with immigration applications should read the amendments and operate in accordance with the amended instructions on and after 28 August 2017.

**Note**

**The amendments described in this circular will be published in the Immigration New Zealand Operational Manual in due course.**

**Any enquiries about these amendments should be directed to the Immigration Contact Centre on 0508 558 855 or 09 914 4100 (Auckland only).**

## **Summary of contents**

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This amendment circular details changes to Immigration New Zealand's Operational Manual, and contains the following:

- The *Description of changes* section contains a summary of the changes to immigration instructions.
- Appendix 1 contains amended *Residence instructions* effective on and after 28 August 2017.
- Appendix 2 contains amended *Temporary Entry instructions* effective on and after 28 August 2017.
- Appendix 3 contains amended *Residence* and *Temporary Entry instructions* effective on or after 28 August 2017.
- Appendix 4 contains immigration instructions rescinded on and after 28 August 2017.
- Appendix 5 contains other amendments to the Operational Manual effective on and after 28 August 2017.

## Description of changes

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### Granting subsequent work visas to victims of people trafficking

*WI16.1 Who is eligible for a special work visa*

Immigration instructions have been amended to clarify when a further visa, beyond the initial 12 months, can be granted to victims of people trafficking under the immigration instructions at *WI16.1 Who is eligible for a special work visa*.

### Clarifying the scope of R5.35 instructions to all residence applications (not just Family Categories)

*R5.35 Later application under one of the Family Categories by previous applicants*

R5.35 has been amended to prevent the approval of a residence application under any category where that application is based on a relationship with a New Zealand resident, permanent resident or citizen who had gained residence as the partner or the dependent child of the applicant or the applicant's partner.

### Declining a residence application on the grounds that travel documents have not been provided

*R5.45 Approval in principle*

*R5.50 Lapsing an application*

*R5.55 Declining an application*

Immigration instructions have been amended to clarify that a residence application should be declined rather than lapsed when travel documents have not been submitted. R5.45 has also been amended to require the transferring of settlement and investment funds, where applicable.

### Clarify the three characteristics referred to in the objective of the Entrepreneur Work Visa Category

*BB3.15 Requirements for a business plan*

Immigration instructions at BB3.15 have been amended to clarify the specific characteristics businesses need to demonstrate in their business plans: that they must be high growth, innovative or have export potential.

### English requirements for applicants eligible to be included in an earlier successful application

*F2.40 General rules*

English language requirements under the Partnership Category have been amended to require that where a dependent child could have been included in a previous successful residence application in a category that has English language criteria but was not, that child must meet the current English requirements that apply under that category.

**Reflect the new name of the Short-Term Training Scholarship Scheme and reduce the period that recipients of short-term scholarships must spend outside of New Zealand**

*U4.20 Vocational trainees*

*U9.15 New Zealand Aid Programme Short-Term Training Scholarship (STTS) trainees*

*U11 New Zealand Aid Programme-supported students*

*U11.1 New Zealand Aid Programme (NZAP)-supported student undertaking employment*

*WF4.5 Partners of holders of student visas who are supported by the New Zealand Aid Programme*

The Ministry of Foreign Affairs and Trade recently changed the name of the Short-Term Training Awards program to Short-Term Training Scholarships (STTS) programme. New scholarships were also introduced with a minimum duration of four weeks and with a shorter stand-down period.

Immigration instructions have been amended to reflect the new name of the STTS programme and to reduce the stand-down period before recipients of short-term scholarships can be granted a visa to return to New Zealand after their course has ended.

**Clarifying requirements for applicants under Canada and United Kingdom Working Holiday Schemes**

*WI2.20 Canada Working Holiday Scheme*

*WI2.160 United Kingdom Working holiday Scheme*

Immigration instructions for the Canada and United Kingdom working holiday schemes (WHSs) have been amended to specify that:

- a. applicants under the United Kingdom WHS making a second application must have a minimum of \$350 per month funds available for maintenance for the remainder of the period of stay
- b. the age criteria under both the United Kingdom and Canada schemes will not apply for applicants making a second application, since age criteria will have already been tested during applicants' initial online WHS application
- c. applicants under the Canada WHS (whether first or second WHS visa applicants) must have access to comprehensive medical and hospitalisation insurance for the period of stay in New Zealand
- d. applicants for a second Canada WHS visa are not required to provide specific evidence of maintenance funds unless requested by an immigration officer.

**Study abroad scheme exemption from providing evidence of tuition fee**

*U3.10 Tuition fees*

Immigration instructions have been amended to allow student visa applicants studying as part of a study abroad scheme with a New Zealand tertiary education provider to be exempt from providing evidence of payment of tuition fees. Instead they will be required to provide evidence that the New Zealand tertiary institution will receive payment from the foreign tertiary institution or through an authorised third party. *U3.10 Tuition fees* has also been restructured in a table format for readability.

## **Student visas and permission to study for refugee or protection status claimants**

*U10.1 student visas and permission to study for refugee or protection status claimants*

U10.1, which sets out study requirements for refugee or protection status claimants, has been rescinded as this provision is now redundant. All people who are considered domestic students are covered under *U3.35 Definition of a domestic student*.

## **Consolidate Clean Slate Scheme information under one section**

*A5.5 Character checks*

*E7.45 Character requirements for partners supporting ‘partnership-based temporary entry applications’*

*R5.95 Character requirement for partners supporting Partnership Category applications*

Immigration instructions have been amended to consolidate instructions relating to the Clean Slate Scheme into the Administration section of the Operational Manual under the existing character instructions in *A5 Character Requirements*.

## **Miscellaneous changes**

*BF3.15 The amount of ESOL tuition to be pre-purchased by non-principal applicants*

*BJ5.35 English language ability*

*BJ6 Summary of points for the Investor 2 category*

*BJ8.15 Section 49(1) condition: minimum period of time in New Zealand*

*E11.55 Requirements for participants in approved student exchange scheme*

*RV1.20 determining the eligibility of non-principal applicants*

*RW5.40 The amount of ESOL tuition to be pre-purchased*

*U3.35 Definition of ‘domestic student’*

*U4.15 Exchange students*

*U5.1 Status of education providers and programmes*

*U6.35 Visas for the length of a programme of study*

*U14.20 Provider requirements*

*U3.40 Students who wish to change their study conditions*

*V2.1 Visitor visa requirements*

*V2.35 Short-term study in schools*

*WD2 Post-Study work visa – open*

*WI18.10 Evidential requirements*

A number of minor amendments have been made to correct or clarify immigration instructions, as follows:

- remove reference to the Ministry of Education where the immigration instructions refer to Education (Pastoral Care of International Students) Code of Practice 2016, as it is now administered by the New Zealand Qualifications Authority
- add ‘study location’ as a condition of a student visa that may be varied, in order to ensure a variation of conditions is considered where a student proposes to change study location
- make minor adjustments to the way English language test scores are expressed in order to clarify ESOL tuition fees and entitlements

- amendments are being proposed to clarify information about points awarded under the Investor 2 Category for Grade C in the Occupational English Test (OET)
- add a note to confirm that the rules set out in generic residence about who can be included in an application also apply to second or subsequent residence class visa applications
- clarify the time in New Zealand requirement and correct a cross referencing error in the Investor 2 instructions at *BJ8.15 Section 49(1) condition: minimum period of time in New Zealand*
- clarify the qualification requirements under *WD2 Post-Study work visa – open*
- correct a formatting error at U3.35.1

## **Other miscellaneous changes to the administration and compliance provisions**

*A5.20 Applicants ineligible for a residence class visa or entry permission*

*A22.10 Collection of biometric information*

*A23.1 Overview and legal framework*

*C4.70 Communication on refugee matters*

*D2.15 Deportation liability: other grounds*

*D2.25 Identifying and locating people suspected of being liable for deportation*

*D2.35 Cancellation or suspension of deportation liability*

*D2.30 Period of deportation liability*

*D2.40 Deportation*

*D2.45 Prohibition on entry*

*D4.16 Arresting or detaining officer may seek assistance*

*D4.20 Turnaround of persons arriving at the border*

*D5.10 Decision on application for warrant of commitment*

*D5.55 Form of custody of persons detained without warrant overnight*

*D7.10 Obstruction or failing to meet requirements*

*D7.35 Offences relating to carriers or a person in charge of a craft*

*E3.40 Cancellation of visas on triggering event*

*E8.10 Temporary visas for refugee or protection status claimants*

*N1.1 Obligation of transit passenger*

*RA5.1 effect of being liable for deportation on residence class visa applications*

*Y4.40 People who may be refused entry permission: not supplying biometric information*

Align the administration and compliance provisions with Immigration Act 2009 and the Immigration Amendment Act 2015.

## **Appendix 1: Amendments to Residence instructions effective on and after 28 August 2017**

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### **R5.35 Later application under any residence category by previous applicants**

An applicant for a residence class visa in New Zealand must not be approved under those instructions if their application is based on their relationship to a New Zealand permanent resident, resident or citizen who originally obtained a residence class visa as the partner or dependent child(ren) of the applicant or the applicant's partner.

## R5.45 Approval in principle

- a. An application for a residence class visa is approved in principle at such time as an immigration officer is satisfied that all requirements necessary to demonstrate eligibility under the relevant instructions have been met with the exception of:
  - i. the payment of any ESOL tuition fee; or
  - ii. transfer and/or investment of funds, as required under the relevant category of residence.
- b. The date of approval in principle is the date of the letter to the principal applicant or their agent advising that approval in principle has been given.
- c. An initial period of time must be given to applicant(s) to fulfil outstanding requirements, which may include the provision of an acceptable travel document for the principal applicant required to grant a residence class visa.
- d. If the outstanding requirements have not been fulfilled within the period specified, the application must be declined unless an immigration officer is satisfied that circumstances warrant extending that period, as outlined in paragraphs (e)–(f) below.
- e. Immigration officers must consider any relevant circumstances in deciding whether or not to decline an application approved in principle in terms of (d) above, including but not limited to:
  - i. the death of a family member;
  - ii. illness;
  - iii. loss or theft of documentation.
- f. Following consideration of the relevant circumstances in (e) above, an immigration officer may, if appropriate, extend the initial approval in principle period.
- g. Where appropriate, more than one approval in principle letter may be issued to allow the principal applicant time to fulfil outstanding requirements.

**Example:** An applicant under a Migrant Investment category may be approved in principle and given an initial period of time to fulfil transfer and investment requirements. Once acceptable evidence of transfer and investment has been confirmed by INZ, a further letter may be issued to give the applicant time to submit passports and make payment of ESOL tuition fees.

### R5.45.1 Information received after approval in principle has been given

In accordance with the principles of fairness and natural justice provided in the Administration chapter (A1), principal applicants must be given the opportunity to comment on the basis of any potentially prejudicial information that comes to light after approval in principle, before a final decision on their eligibility under residence instructions (including Health and Character requirements) is made.

## R5.55 Declining an application

Where an application is being declined because:

- a. it does not meet residence instructions, refer to R5.55.1 and R5.55.5.
- b. person included in the application is a person to whom sections 15 or 16 applies, refer to R5.55.15.

### R5.55.1 Declining an application where it does not meet residence instructions

- a. Applications that do not meet residence instructions and applications must be declined.
- b. If an application is declined, immigration officers must notify the principal applicant in writing, informing the principal applicant:
  - i. of the reasons why the application has been declined (giving the points total, if appropriate), and
  - ii. of their right to appeal to the Immigration and Protection Tribunal and how they should lodge the appeal.

**Note:** The form Immigration and Protection Tribunal - Residence Class Visa Appeal (Form 1) or a link to the form on the Ministry of Justice website must be included in the letter advising that the application has been declined.

- c. Immigration officers must record the date that any letter advising that the application has been declined is sent.

### R5.55.5 Right of Appeal to the Immigration and Protection Tribunal

*See also Immigration Act 2009 s 187*

- a. Appeals must be lodged within 42 days after the date that an applicant is deemed to have received a letter advising that an application for a residence class visa has been declined.
- b. Appeals must be lodged on the form Immigration and Protection Tribunal - Residence Class Visa Appeal (Form 1) which contains information on:
  - i. how to lodge an appeal,
  - ii. the required fee,
  - iii. how the time limit for lodging an appeal is calculated.

**Note:** There is no right of appeal to the Immigration and Protection Tribunal for applicants who have been declined on the basis that sections 15 or 16 apply to them (see R5.55.15).

### R5.55.15 Declining an application where it includes a person to whom sections 15 or 16 apply

- a. Pursuant to A5.20, any application including a person to whom sections 15 or 16 of the Immigration Act 2009 apply, must be declined unless covered by one of the exceptions identified at A5.20(a).
- b. If an application is declined, immigration officers must notify the principal applicant in writing, informing the principal applicant that the application has been declined as a person included in the application is prohibited by statute from entitlement or eligibility for the grant of a residence class visa by virtue of sections 15 or 16.

**Note:** An application declined on this basis shall not be assessed under residence instructions.

- c. Immigration officers must record the date that any letter advising that the application has been declined, is sent.

**Note:** An applicant to whom sections 15 or 16 apply who is included in an application declined on this basis has no right of appeal to the Immigration and Protection Tribunal, but other applicants included in that application to whom sections 15 or 16 do not apply, may appeal.

## R5.95 Character requirement for partners supporting Partnership Category applications

- a. Any supporting partner who has been convicted either within New Zealand or any other country of:
  - i. any offence involving domestic violence; or
  - ii. any offence of a sexual naturewill not meet the character requirement for partners supporting Partnership Category applications, unless granted a character waiver (see R5.95.5 below).
- b. If the supporting partner does not meet the character requirement for partners supporting partnership application, the application may be declined.

**Note:** For the purpose of these instructions, 'domestic violence' has the meaning set out in s.3 of the Domestic Violence Act 1995.

Any New Zealand conviction maybe covered under the Criminal Records (Clean Slate) Act 2004. See [A5.5.1](#).

### R5.95.1 Evidence that partners supporting Partnership Category applications meet the character requirement

- a. Character checks must be carried out for partners (aged 17 and over) supporting Partnership Category applications.
- b. The supporting partner character check consists of:
  - i. a New Zealand police certificate obtained by Immigration New Zealand; and
  - ii. a police or similar certificate, less than 6 months old, from any country in which the supporting partner has lived 12 months or more (whether on one visit or intermittently) in the last ten years.
- c. Despite (b), an immigration officer may, where they have reason to suspect the supporting partner may not meet character requirements, request a police certificate from the supporting partner for any country in which they have lived for 12 months or more since they turned 17.
- d. Where an application is submitted without the required police certificate(s), an immigration officer may nevertheless accept the application, and obtain any necessary clearances after acceptance, if a supporting partner requires a police certificate from a country:
  - i. that does not issue police certificates to individuals; or
  - ii. for which no instructions in respect of how to obtain a police certificate is available.
- e. If a police certificate is not available from a particular country, the supporting partner must provide a separate statutory declaration in both English and the supporting partner's first language, which must:
  - i. detail the supporting partner's attempts to obtain a police certificate; and
  - ii. state whether the supporting partner has been convicted, or found guilty of, or charged with any offences against the law of that country; and
  - iii. be corroborated by other information confirming the supporting partner's character.

#### Notes:

~ For full information on police certificates see [A5.10](#).

~ Instructions in respect of how to obtain police certificates from specific countries can be obtained from the INZ website at [www.immigration.govt.nz/policecertificate](http://www.immigration.govt.nz/policecertificate).

### R5.95.5 Action

- a. Immigration officers must not automatically decline partnership applications on the basis that the supporting partner does not meet the character requirement for partners supporting partnership applications.
- b. Officers must consider the surrounding circumstances of the application to decide whether or not they are compelling enough to justify waiving the character requirement. The circumstances include but are not limited to the following factors as appropriate:
  - i. if applicable, the seriousness of the offence (generally indicated by the term of imprisonment or size of the fine); and/or
  - ii. whether there is more than one offence; and/or
  - iii. how long ago the relevant event occurred.
- c. Officers must make a decision only after they have considered all relevant factors, including (if applicable):
  - i. any advice from the National Office of INZ; and
  - ii. compliance with fairness and natural justice requirements (see [A1](#)).
- d. Officers must record:
  - i. their consideration of the surrounding circumstances, (see paragraph (b) above), noting all factors taken into account; and

- ii. the reasons for their decision to waive or decline to waive the character requirement.
- e. Any decision to waive the character requirement for partners must be made by an officer with Schedule 1-3 delegations.

## **BB3.15 Requirements for a business plan**

Business plans must:

- a. be to establish or purchase a specific business in New Zealand; and
- b. be specific to the proposed business, not a generic or template business plan; and
- c. be no more than three months old on the date the application is made; and
- d. include satisfactory evidence:
  - i. to support the claims that have been made for the proposed business; and
  - ii. that the principal applicant has sufficient funds and/or assets to finance their business proposal; and
  - iii. that the principal applicant has sufficient business experience that is relevant to their business proposal; and
- e. demonstrate to the satisfaction of a business immigration specialist that:
  - i. the principal applicant's financial forecasts are realistic; and
  - ii. the principal applicant has sufficient relevant knowledge about the proposed business and the New Zealand business environment; and
  - iii. the principal applicant has done sufficient market research into the New Zealand business environment and market for their proposed business, to optimise their chances of succeeding; and
  - iv. the proposed business meets at least one of the following three business characteristics identified in the objective of the Entrepreneur Work Visa Category (BB1):
    - high growth
    - innovative, or
    - export potential; and
- f. include sufficient supporting documentation to support any of the claims made about the proposed business, or concerning any aspect of the applicant's skills, funds or experience.

### **BB3.15.1 Requirements for a business plan involving the purchase of an existing business**

Where the business plan involves the purchase of an existing business, the plan must:

- a. identify the particular business to be purchased; and
- b. include:
  - i. information that allows business immigration specialists to assess the benefit that the applicant's business activity will provide New Zealand; and
  - ii. evidence that outlines the purchase price and the financial performance of the existing business, which may include, but is not limited to the conditional sale and purchase agreement, an independent valuation, and/or financial statements for the previous two years; and
  - iii. information on numbers of positions currently employed in the business, such as wage records, anonymised employment agreements and job descriptions for each role, or Employer Monthly Schedules prepared for Inland Revenue.

### **BB3.15.5 Assessment of a business plan**

- a. A business immigration specialist will assess applications based on:
  - i. an applicant's capacity to contribute to economic growth by growing or establishing a business in New Zealand that either:
    - is high growth; or
    - is innovative; or
    - has export potential; and
  - ii. plans provided by the applicant to demonstrate how they will meet the objectives set out in their business plan; and
  - iii. evidence that the applicant has sufficient business experience relevant to the proposed business; and
  - iv. information provided by the applicant demonstrating how their business will significantly benefit New Zealand.
- b. In assessing a business plan, a business immigration specialist will consider the credibility of the information provided and whether the business will significantly benefit New Zealand.
- c. Business immigration specialists must be satisfied that the information an applicant submits complies with the evidential requirements set out in Entrepreneur Work Visa Category instructions and may request additional evidence as they deem necessary to demonstrate that an applicant or a business plan meets the requirements as set out in BB3.1.

- d. INZ may submit any business plan to an independent person or business for vetting. They will offer an independent assessment and advice, which will be considered by a business immigration specialist in making a decision.
- e. INZ may also consult other government agencies or sections of the Ministry of Business, Innovation and Employment when assessing business plans.

**BB3.15.10 Verification of a business plan**

- a. A business immigration specialist must be satisfied that documents provided in support of the business plan are genuine and accurate, and may take any steps they determine necessary to verify such documents and the information they contain.
- b. A business immigration specialist may interview, or ask another office of INZ to interview, the principal applicant in order to determine whether or not the information contained in the business plan is genuine and accurate.

### **BF3.15 The amount of ESOL tuition to be pre-purchased by non-principal applicants**

- a. The amount of ESOL tuition to be pre-purchased is determined by the applicant's English language test results according to the following table.

<b>Test</b>	<b>Overall score</b>	<b>Charge to be paid</b>	<b>ESOL entitlement</b>
International English Language Testing System (IELTS) - General or Academic Module	4.5 or more but less than 5.0	NZ\$1,735	NZ\$1,531.82
Test of English as a Foreign Language Internet-based Test (TOEFL iBT)	32 to 34		
Pearson Test of English Academic (PTE Academic)	30 to 35		
Cambridge English: First (FCE) or Cambridge English: First (FCE) for Schools	147 to 153		
Occupational English Test (OET)	Grade C in all four skills (Listening, Reading, Writing and Speaking)*		
IELTS - General or Academic Module	4.0 or more, but less than 4.5	NZ\$3,420	NZ\$3,063.64
TOEFL iBT	31		
PTE Academic	29		
FCE or FCE for Schools	142 to 146		
OET	Grade D in all four skills (Listening, Reading, Writing and Speaking)*		

IELTS - General or Academic Module	3.5 or more, but less than 4.0	NZ\$5,110	NZ\$4,600.00
IELTS - General or Academic Module	Less than 3.5	NZ\$6,795	NZ\$6,131.82
TOEFL iBT	Less than 31		
PTE Academic	Less than 29		
FCE or FCE for Schools	Less than 142		
OET	Failed to achieve at least Grade D in all four skills (Listening, Reading, Writing and Speaking)*		

\* A score in all four skills is required for the OET as there is no overall grade for this test

**Note:** No ESOL tuition is required to be pre-purchased if the applicant meets the English language requirements for the category they are applying under.

- b. The charge includes the applicant's ESOL tuition entitlement, as well as the INZ and TEC administration costs.
- c. If an applicant has not submitted an English language test result when requested, the maximum charge of NZ\$6,795 applies.

### **BJ5.35 English language ability**

- a. Principal applicants must qualify for a minimum of 1 point for English language ability.
- b. English language ability qualifies for points as follows:

<b>Test</b>	<b>Required Score</b>	<b>Points</b>
International English Language Testing System (IELTS) - General or Academic Module	Overall score of 3.0 or more but less than 4.0	1
IELTS - General or Academic Module	Overall score of 4.0 or more but less than 5.0	4
TOEFL iBT	Overall score of 31 to 34	
PTE Academic	Overall score of 29 to 35	
FCE or FCE for Schools	Overall score of 142 to 153	
OET	Grade D or higher in all four skills (Listening, Reading, Writing and Speaking)*	
IELTS - General or Academic Module	Overall score of 5.0 or more	10
TOEFL iBT	Overall score of 35 or more	
PTE Academic	Overall score of 36 or more	
FCE or FCE for Schools	Overall score of 154 or more	
OET	Grade C or higher in all four skills (Listening, Reading, Writing and Speaking)*	
IELTS - General or Academic Module	Overall score of 6.0 or more	13
TOEFL iBT	Overall score of 60 or more	
PTE Academic	Overall score of 50 or more	
FCE or FCE for Schools	Overall score of 169 or more	
IELTS - General or Academic Module	Overall score of 7.0 or more	17
TOEFL iBT	Overall score of 94 or more	

PTE Academic	Overall score of 65 or more	
FCE or FCE for Schools	Overall score of 185 or more	
OET	Grade B or higher in all four skills (Listening, Reading, Writing and Speaking)*	
IELTS - General or Academic Module	Overall score of 8.0 or more	20
TOEFL iBT	Overall score of 110 or more	
PTE Academic	Overall score of 79 or more	
FCE or FCE for Schools	Overall score of 200 or more	
OET	Grade A or higher in all four skills (Listening, Reading, Writing and Speaking)*	

\* A score in all four skills is required for the OET as there is no overall grade in this test.

#### **BJ5.35.1 Evidence of English language ability**

- a. Principal applicants claiming 1 to 17 points under BJ5.35(b) must provide English language test results (no more than 2 years old at the time the application is lodged) with a score that qualifies for 1 to 17 points.
- b. Principal applicants claiming 20 points under BJ5.35(b) must provide one of the following:
  - i. English language test results (no more than 2 years old at the time the application is lodged) with a score that qualifies for 20 points; or
  - ii. evidence that they have an English-speaking background (see BF2.1) which is accepted by a business immigration specialist as meeting the standard of English for which 10 points can be awarded; or
  - iii. other evidence which satisfies a business immigration specialist that, taking account of that evidence and all the circumstances of the application, the person meets the standard of English for which 20 points can be awarded. Evidence may include but is not limited to:
    - o the country in which the applicant currently resides;
    - o the country(ies) in which the applicant has previously resided;
    - o the duration of residence in each country;
    - o the nature of the applicant's current or previous employment (if any) and whether it required or was likely to have required skill in English language;
    - o the nature of the applicant's qualifications (if any) and whether the obtaining of those qualifications was likely to have required skill in English language.
- c. In any case under (b) (ii) or (iii), a business immigration specialist may require an applicant to provide English language test results in terms of paragraph (b)(i). In such cases, the English language test results will be used to determine whether the applicant can be awarded 10 points for English language ability.

**Note:** The tests recognised by Immigration New Zealand as set out at BJ5.35 provide an assessment of ability in English, including performance in listening, reading, writing and speaking.

### **BJ6 Summary of points for the Investor 2 category**

<b>Age</b>	<b>Points</b>
60 - 65	0
50 - 59	5
40 - 49	10
30 - 39	15
Less than 30	20

<b>Business Experience years</b>	<b>Points</b>
3	9
4	12
5	15
6	18
7	21
8	24
9	27
10	30
11	33
12	36
13	39
14	42
15+	45

<b>Test</b>	<b>Required Score</b>	<b>Points</b>
International English Language Testing System (IELTS) - General or Academic Module	Overall score of 3.0 or more but less than 4.0	1
IELTS - General or Academic Module	Overall score of 4.0 or more but less than 5.0	4
TOEFL iBT	Overall score of 31 to 34	
PTE Academic	Overall score of 29 to 35	

FCE or FCE for Schools	Overall score of 142 to 153	
OET	Grade D or higher in all four skills (Listening, Reading, Writing and Speaking)*	
IELTS - General or Academic Module	Overall score of 5.0 or more	10
TOEFL iBT	Overall score of 35 or more	
PTE Academic	Overall score of 36 or more	
FCE or FCE for Schools	Overall score of 154 or more	
OET	Grade C or higher in all four skills (Listening, Reading, Writing and Speaking)*	
IELTS - General or Academic Module	Overall score of 6.0 or more	13
TOEFL iBT	Overall score of 60 or more	
PTE Academic	Overall score of 50 or more	
FCE or FCE for Schools	Overall score of 169 or more	
IELTS - General or Academic Module	Overall score of 7.0 or more	17
TOEFL iBT	Overall score of 94 or more	
PTE Academic	Overall score of 65 or more	
FCE or FCE for Schools	Overall score of 185 or more	
OET	Grade B or higher in all four skills (Listening, Reading, Writing and Speaking)*	
IELTS - General or Academic Module	Overall score of 8.0 or more	20
TOEFL iBT	Overall score of 110 or more	
PTE Academic	Overall score of 79 or more	
FCE or FCE for Schools	Overall score of 200 or more	
OET	Grade A or higher in all four skills (Listening, Reading, Writing and Speaking)*	

\* A score in all four skills is required for the OET as there is no overall grade in this test.

Investment Amount (NZ\$M)	Points	Investment Amount (NZ\$M)	Points
\$3	10	\$6.5	80
\$3.25	15	\$6.75	85

\$3.5	20	\$7	90
\$3.75	25	\$7.25	95
\$4	30	\$7.5	100
\$4.25	35	\$7.75	105
\$4.5	40	\$8	110
\$4.75	45	\$8.25	115
\$5	50	\$8.5	120
\$5.25	55	\$8.75	125
\$5.5	60	\$9	130
\$5.75	65	\$9.25	135
\$6	70	\$9.5	140
\$6.25	75	\$9.75	145

<b>Investment in Growth Investments</b>	<b>Bonus points</b>
Investment of NZ\$750,000 or more in growth investments	20

### **BJ8.15 Section 49(1) condition: minimum period of time in New Zealand**

As set out at BJ8.10(b), the principal applicant under each category of the Migrant Investment Categories must spend a minimum period of time in New Zealand during the required investment period. The time periods are:

a. Investor 1 Category:

- i. 12% of each of the final two years of the three year investment period (44 days per year); or
- ii. 88 days over the three year investment period (from their first day in New Zealand as a resident) if a minimum of NZ\$2.5 million (25% of the NZ\$10 million investment amount) is invested in 'growth investments' (see BJ3.15.1).

b. Investor 2 Category:

- i. 40% of each of the final three years of the four year investment period (146 days per year); or
- ii. 438 days over the four year investment period from their (first day in New Zealand as a resident) if a minimum of NZ\$750,000 (25% of NZ\$3 million) is invested in 'growth investments' (see BJ5.45).

## **F2.40 General rules**

### **F2.40.1 English language requirements**

- a. If an applicant was eligible to be included as a partner or a dependent child of a principal applicant in an earlier successful application under the General Skills Category, Skilled Migrant Category, Residence From Work Category, Business Immigration Instructions or previous Business Investor Category, but was not at that time included in the application, they will have to meet the criteria of the English language instructions applicable at the time the application under the Partnership Category is made.
- b. Such an applicant will be subject to the applicable English language instructions as if they were a non-principal applicant under the Skilled Migrant Category or Business Immigration Instructions.
- c. An applicant who would have been eligible for inclusion in an earlier General Skills Category or Skilled Migrant Category application will be subject to the English language of the Skilled Migrant Category applicable at the time the application under Partnership Category is made.
- d. An applicant who would have been eligible for inclusion in an earlier Business Investor category or Business Immigration Instructions application will be subject to the English language requirements of Business Immigration Instructions applicable at the time the application under Partnership Category is made.

### **F2.40.5 Applications under Partnership Category of persons eligible for inclusion in earlier registrations or expressions of interest**

If the principal applicant in an application under Partnership Category was eligible for inclusion in a successful registration under the Family Quota, the Refugee Family Support Category, Samoan Quota Scheme or the Pacific Access Category, or in an expression of interest under the Parent Category from which an invitation to apply was subsequently issued, but was not included, they must not subsequently be granted residence under Partnership Category.

### **F2.40.10 Resident visas with conditions imposed under section 49(1)**

If a New Zealand partner holds a resident visa subject to conditions (excluding travel conditions) imposed under section 49(1) of the Immigration Act 2009, then the principal applicant's resident visa will be subject to the condition that the New Zealand resident partner complies with those conditions (see R5.65.1).

## **RV1.20 Determining the eligibility of non-principal applicants**

- a. For the purpose of making an application under this chapter,
  - i. 'principal applicant' means the principal applicant of the original resident visa application; and
  - ii. 'non-principal applicants' means the non-principal applicants included in the original resident visa application.
- b. The only requirement for the grant of a permanent resident visa to a non-principal applicant is that the principal applicant must hold a permanent resident visa, unless:
  - i. the non-principal applicant is excluded by the provisions of RV2.1; or
  - ii. the provisions requiring a secondary applicant to be assessed independently of the principal applicant apply (RV1.20.1 to RV1.20.20); or
  - iii. the non-principal applicant has never been in New Zealand as a resident (as required by RV1.5(d)).
  - iv. the non-principal applicant does not meet character instructions (see A5) (unless given a special direction or granted a character waiver) or falls under RV1.25.
- c. A non-principal applicant must be granted a variation of travel conditions to allow travel until the same date as the principal applicant's resident visa unless:
  - i. the non-principal applicant is excluded by the provisions of RV3.1(d); or
  - ii. the provisions requiring a secondary applicant to be assessed independently of the principal applicant apply (RV1.20.1 to RV1.20.20); or
  - iii. the non-principal applicant has never been in New Zealand as a resident (as required by RV1.5(d)).
- d. A non-principal applicant will be granted a second or subsequent resident visa based on the eligibility of the principal applicant for a variation of travel conditions, second or subsequent resident visa or permanent resident visa, unless
  - i. the non-principal applicant is excluded by the provisions of RV4.1; or
  - ii. specific instructions in RV1.20.1 to RV1.20.20 apply; or
  - iii. the non-principal applicant has never been in New Zealand as a resident (as required by RV1.5(d)).
  - iv. the non-principal applicant does not meet character instructions (see A5) (unless given a special direction or granted a character waiver) or falls under RV1.25.
- e. If a non-principal applicant makes an application for further travel conditions or a permanent resident visa and the principal applicant:
  - i. does not lodge an application; or
  - ii. is declined a variation of travel conditions or a permanent resident visa; or
  - iii. does not hold a permanent resident visa or a resident visa with valid travel conditions,
  - iv. then, unless the instructions in RV1.20.1 to RV1.20.20 apply, the application will only be considered under the provisions of RV3.1.1 or [RV3.10](#).

**Note:** RV1.20 determines the eligibility of people who were not principal applicants in the original residence application to be granted a variation of travel conditions, second or subsequent resident visa or a permanent resident visa.

R2.1 Who may be included in an application determines who can be included in an application for a variation of travel conditions, second or subsequent resident visa or permanent resident visa application.

### **Examples:**

- o Andrea includes her son in her resident visa application under partnership. Her son is now 26, therefore he cannot be included in Andrea's permanent resident visa application because he does not meet the definition of a dependent child at R2.1. His eligibility for a permanent resident visa will still be assessed as a non-principal applicant under RV 1.20 since he was a non-principal applicant in the original resident visa application.
- o Sue and Mike were each granted a resident visa in their own right under the Skilled Migrant Category, becoming partners afterwards. Mike can be included in Sue's permanent resident visa application as long as he provides evidence he meets the definition of a partner at R2.1, but they will be assessed for the grant of a permanent resident visa each in their own right as they were both principal applicants in their own original resident visa applications.

## **RV1.20.1 Non-principal applicants who are partners**

- a. The partner of the principal applicant is eligible to be considered in their own right for variation of travel conditions or a new residence class visa if the following events occur:
  - i. the partner and the principal applicant become divorced or separated; or
  - ii. the partner is granted a non-molestation or protection order against the principal applicant; or
  - iii. the principal applicant is convicted of an offence against the partner or a dependent child;
  - iv. the principal applicant dies; or

- v. the principal applicant has obtained New Zealand citizenship.
- b. Evidence of the circumstances in which the partner of a principal applicant may apply for an a variation of travel conditions or a new residence class visa in their own right may include but is not limited to original or certified copies of the following:
  - o the final decree of divorce or a dissolution order from the principal applicant; or
  - o a non-molestation or protection order against the principal applicant; or
  - o evidence that the principal applicant has been convicted of an offence against the person of the partner or of a dependent child; or
  - o evidence of separation; or
  - o the death certificate of the principal applicant.

#### **RV1.20.5 Non-principal applicants who were dependent children in the original residence application**

- a. The eligibility of a dependent child included in the original residence application for a permanent resident visa, a variation of travel conditions or a second or subsequent visa will be assessed in the same way regardless of whether that child is still dependent at the time of application.
- b. In the case of the dissolution of a partnership as described in RV1.20.1(b) above, a child's eligibility will be assessed on the basis of:
  - i. whichever parent has legal right of custody if they are under 16 (see [R2.1.45](#)); or
  - ii. whichever parent they are living with if they are 16 or over; or
  - iii. the principal applicant, if they are 16 or over and are not living with either parent.
- c. If the principal applicant dies or obtains New Zealand citizenship, children must be assessed on the basis of the eligibility of the non-principal applicant partner included in the original residence application.
- d. The child can be assessed in their own right if the provisions of (b) or (c) above require that a child be assessed on the basis of the non-principal applicant partner included in the application, and this is not possible because:
  - i. a non-principal applicant partner was not included in the application; or
  - ii. the non-principal applicant partner has died; or
  - iii. the non-principal applicant partner has obtained New Zealand citizenship.
- e. Children who wish to have their application under these instructions assessed based on the eligibility of a person other than the principal applicant must provide evidence that their circumstances meet the criteria set out in (b) to (d) above (for example, evidence of custody).

#### **RV1.20.20 Transitional provisions**

Non-principal applicants who are considered to hold resident visas because they:

- a. were granted residence permits before 30 October 1995 or in reliance on residence visas issued before 30 October 1995; or
- b. arrived in New Zealand lawfully to live permanently in New Zealand at any time before 2 April 1974 and were considered to hold a residence permit under the Immigration Act 1987;

may be granted a permanent resident visa or variation of travel conditions if they meet the criteria set out in the instructions in this chapter regardless of the status of the principal applicant.

#### **RW5.40 The amount of ESOL tuition to be pre-purchased**

- a. The amount of ESOL tuition to be pre-purchased is determined by the applicant's English language test results according to the following table.

<b>Test</b>	<b>Overall score</b>	<b>Charge to be paid</b>	<b>ESOL entitlement</b>
International English Language Testing System (IELTS) - General or Academic Module	4.5 or more but less than 5.0	NZ\$1,735	NZ\$1,531.82
Test of English as a Foreign Language Internet-based Test (TOEFL iBT)	32 to 34		
Pearson Test of English Academic (PTE Academic)	30 to 35		
Cambridge English: First (FCE) or Cambridge English: First (FCE) for Schools	147 to 153		
Occupational English Test (OET)	Not applicable (see RW5.1.1)		
IELTS - General or Academic Module	4.0 or more, but less than 4.5	NZ\$3,420	NZ\$3,063.64
TOEFL iBT	31		
PTE Academic	29		
FCE or FCE for Schools	142 to 146		
OET	Failed to achieve Grade C or higher in all four skills (Listening, Reading, Writing and Speaking), but achieved at least Grade D in all four skills*		

IELTS - General or Academic Module	3.5 or more, but less than 4.0	NZ\$5,110	NZ\$4,600.00
IELTS - General or Academic Module	Less than 3.5	NZ\$6,795	NZ\$6,131.82
TOEFL iBT	Less than 31		
PTE Academic	Less than 29		
FCE or FCE for Schools	Less than 142		
OET	Failed to achieve at least Grade D in all four skills (Listening, Reading, Writing and Speaking)*		

\* A score in all four skills is required for the OET as there is no overall grade for this test.

- b. The charge includes the applicant's ESOL tuition entitlement, as well as INZ and TEC administration costs.
- c. If an applicant has not submitted an English language test result when requested, the maximum charge of NZ\$6,795 applies.

## **Appendix 2: Amendments to Temporary Entry instructions effective on and after 28 August 2017**

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## **E7.45 Character requirements for partners supporting 'partnership-based temporary entry applications'**

- a. The following people will not meet the character requirement for supporting partners, unless granted a character waiver (see E7.45.10 below), if they have been convicted of any offence involving domestic violence or of a sexual nature whether in New Zealand or overseas:
  - i. New Zealand citizen or resident class visa holder at any time since turning 17; or
  - ii. work ([WF3](#)) or student ([WF4](#)) visa holders in the seven years prior to the date the partnership application is made
- b. If the supporting partner does not meet the character requirement for partners supporting 'partnership-based temporary entry applications', the application may be declined.

**Note:** For the purpose of these instructions, 'domestic violence' has the meaning set out in s.3 of the Domestic Violence Act 1995.

Any New Zealand conviction maybe covered under the Criminal Records (Clean Slate) Act 2004. See [A5.5.1](#).

### **E7.45.1 'Partnership-based temporary entry applications'**

- a. For the purpose of these instructions 'partnership-based temporary entry applications' are applications made under the following immigration instructions (except where the principal applicant is a dependent child):
  - i. Entry to New Zealand for the purpose of a culturally arranged marriage (see V3.35);
  - ii. Partners of New Zealand citizens or residence class visa holders (see V3.15 and WF2);
  - iii. Partners and dependent children of student or work visa holders (see E4.5);
  - iv. Work instructions for dependants (see WF2, WF4);
  - v. Student instructions for partners and dependent children of diplomatic consular or official staff (U8.10);
  - vi. Visitor instructions for dependants (see V3.10, V3.15).
- b. Despite E7.45.1 (a) above, partners of military visa holders do not need to meet the character requirement.

### **E7.45.5 Evidence that partners supporting 'partnership-based temporary entry applications' meet the character requirement**

- a. Character checks may be carried out if there is an indication that a partner (aged 17 and over) who is supporting a 'partnership-based temporary entry application' may not meet character requirements.
- b. Where a character check is required in terms of (a) above, an immigration officer may obtain a New Zealand police certificate on behalf of the supporting partner and/or request the partner provide an overseas police certificate to meet the character requirements of E7.45(a).
- c. If a police certificate is not available from a particular country, the supporting partner must provide a separate statutory declaration in both English and the partner's first language, which must:
  - i. detail the supporting partner's attempts to obtain a police certificate; and
  - ii. state whether they have been convicted or found guilty of or charged with any offences against the law of that country; and
  - iii. be corroborated by other information confirming their character.

#### **Notes:**

~ For full information on police certificates see [A5.10](#).

~ Instructions in respect of how to obtain police certificates from specific countries can be obtained from the INZ website at [www.immigration.govt.nz/policecertificate](http://www.immigration.govt.nz/policecertificate).

### **E7.45.10 Action**

- a. Immigration officers must not automatically decline 'partnership-based temporary entry applications' on the basis that the supporting partner does not meet the supporting partner character requirement.
- b. Officers must consider the surrounding circumstances of the application to decide whether or not they are compelling enough to justify waiving the supporting partner character requirement. The circumstances include but are not limited to the following factors as appropriate:
  - i. if applicable, the seriousness of the offence (generally indicated by the term of imprisonment or size of the fine); and/or
  - ii. whether there is more than one offence; and/or
  - iii. how long ago the offending occurred.
- c. Officers must make a decision only after they have considered all relevant factors, including (if applicable):
  - i. any advice from the National Office of INZ; and
  - ii. any submissions and information provided by the applicant or supporting partner in respect of whether a waiver should be granted.
- d. Officers must record:

- i. their consideration of the surrounding circumstances, (see paragraph (b) above), noting all factors taken into account; and
  - ii. the reasons for their decision to waive or decline to waive the partner character requirement.
- e. Any decision to waive the character requirement for supporting partners must be made by either:
- i. a seconded immigration officer; or
  - ii. an officer with Schedule 1–3 delegations

## **E8.10 Temporary visas for refugee or protection status claimants**

The requirements for lodging temporary visa applications are different if the applicant is a person who is also claiming refugee or protection status in New Zealand. A claimant who meets the requirements in E8.10.1 may be granted a temporary visa.

### **E8.10.1 General requirements**

*See also Immigration Act 2009 s 393*

- a. A refugee or protection status claimant awaiting a decision on their claim, who holds a current temporary visa may submit an application for a further temporary visa at any INZ office in New Zealand.
- b. Applications must be made on the approved application form and submitted together with the applicant's travel document (or identity document in which the current visa is held), and a passport-sized photograph of the applicant's head and shoulders.
- c. Such applicants do not have to pay a fee provided they apply while their claim (or appeal) is being determined and are exempt from paying the immigration levy.
- d. The applicant must ensure that they submit each application before any existing visa expires (see E2.10).
- e. Normally, claimants for refugee or protection status will be granted visitor visas (see V3.90). For information on when claimants may be granted other visas see E8.10.15 below, WI6 (work), U3.35 (student) and L6.1 (limited).

### **E8.10.5 Conditions of temporary visas granted to refugee or protection status claimants**

*See also Immigration Act 2009 ss 142, 239*

- a. A visa granted to a refugee or protection status claimant before their claim or appeal is determined will not normally include travel conditions because New Zealand's obligations to refugee or protection status claimants cease when they leave New Zealand.
- b. Despite E8.10.5(a) above, applications will be considered on a case by case basis to see whether the particular circumstances justify granting a visa with travel conditions to return to New Zealand.
- c. Claimants wishing to travel overseas should be advised that their claim or any subsequent claim or appeal will be treated as withdrawn if they leave New Zealand.
- d. Each time a temporary visa is granted to a refugee or protection status claimant, they must be advised in writing that their visa is subject to the following conditions:
  - i. at all times they keep INZ informed of any change of their New Zealand residential address; and
  - ii. that they may become liable for deportation, if:
    - o their claim is declined, and they fail to appeal, or have appealed unsuccessfully, to the Tribunal; or
    - o they withdraw their claim.

### **E8.10.10 Granting temporary visas to refugee or protection status claimants on arrival in New Zealand**

*See also Immigration Act 2009 ss 14, 15, 16, 103, 378*

- a. If a person indicates an intention to claim refugee or protection status on arrival in New Zealand and they complete a claim form for refugee or protection status, a visitor visa current for 6 months from the date of arrival may be granted, unless there are reasons not to grant a visa, such as:
  - i. the individual is a person to whom section 15 or 16 of the Immigration Act 2009 applies (see A5.40); or
  - ii. the person's identity cannot be established to the satisfaction of INZ.
- b. Appropriately delegated officers may give special directions to waive the following requirements that usually apply to persons travelling to New Zealand:
  - i. the requirement to travel to New Zealand as the holder of a visa granted under the Immigration Act 2009; and
  - ii. the relevant requirements arising under section 103(1) of the Immigration Act 2009.
- c. The fact that a claimant entered New Zealand on a false passport does not mean that they should not be granted a temporary visa.
- d. If the claimant entered New Zealand on their own genuine passport, the visitor visa should be endorsed in that passport.
- e. If the claimant entered New Zealand on a false passport, the visitor visa should be endorsed in an INZ certificate of identity form (see A2.20.5), and INZ should retain the false passport.
- f. If the claimant entered New Zealand without a travel document, the visitor visa should be endorsed in an INZ certificate of identity form (see A2.20.5) unless these are reasons not to grant a visa.
- g. If the claim form for refugee or protection status has not been completed at the border, a visitor visa current for one month from the date of arrival may be granted unless there are reasons not to grant a visa and the refugee or protection status claimant should be told that:

- i. an application for a further temporary visa will only be considered after they have confirmed their claim in the prescribed manner (see C3.25); and
- ii. they should submit any application for a further temporary visa at an INZ office in New Zealand before the existing visa expires.

**Note:** Guidance concerning the continuing treatment of persons claiming refugee or protection status on arrival at the border, including in a mass arrival context, is contained in Operational Instructions A16.2.

#### **E8.10.15 Refugee or protection status claimants granted temporary entry class visas**

*See also Immigration Act 2009 ss 61, 150, 187*

- a. Any claimant to whom a temporary entry class visa has been granted, (whether before or after the person became a claimant) and any temporary entry class visa holder who ceases to be a refugee or protection status claimant by virtue of his or her claim or appeal being declined may not, either before or after the expiry of the temporary entry class visa:
  - i. apply for a further visa of any class or type while in New Zealand; or
  - ii. while in New Zealand, request a special direction or make a request for the grant of a visa under A23; or
  - iii. bring any appeal under section 187 of the Immigration Act 2009 to the Tribunal.
- b. Despite (a)(i) above, a refugee or protection claimant may apply for a further temporary entry class visa for such period as may be required for the claimant to be lawfully in New Zealand while his or her claim is determined.
- c. Nothing in E8.10.15 prevents a person from bringing an appeal to the Tribunal, arising from a decision made under part 5 and 6 of the Immigration Act 2009.
- d. This section ceases to apply to a person if and when:
  - i. the person is recognised as a refugee or a protected person; or
  - ii. the person leaves New Zealand; or
  - iii. the person is granted a visa (other than a temporary entry class visa granted in (b) above).

#### **E8.10.20 Applications for further temporary visas by refugee or protection status claimants**

*See also Immigration Act 2009 s 378*

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 reg 34*

- a. To be eligible for the grant of a further temporary visa, claimants or refugee or protected persons must:
  - i. be in New Zealand; and
  - ii. submit their application before their existing visa expires.
- b. Claimants or refugee or protected persons must apply for temporary visas in the prescribed manner (see E4.50.1), but when the applications are submitted, appropriately delegated immigration officers may waive, by special direction, any requirements specified for each type of visa.
- c. Temporary visas valid for 12 months may be granted to successful applicants.
- d. Immigration officers may grant visas valid for less than 12 months, where they expect the refugee or protection status claim to be determined in significantly less than 12 months.
- e. Further visas will not normally be granted to those who make subsequent claims, but in each case applications will be considered to see whether the particular circumstances justify granting a visa.

#### **E8.10.25 Situation of claimants in New Zealand unlawfully**

*See also Immigration Act 2009 s 61*

- a. A refugee or protection status claimant unlawfully in New Zealand may be eligible to be considered for a temporary visa under section 61 of the Immigration Act 2009 (see A23).

**Note:** such persons who have been granted a temporary entry visa under the Immigration Act 2009 or temporary permit under the Immigration Act 1987 on or after 1 October 1999 are covered by section 150 of the Immigration Act 2009 (see E8.10.15).

- b. Before seeking approval to grant a visa under section 61, an immigration officer must first:
  - i. establish the reasons why the claimant's original visa (if any) expired; and
  - ii. obtain supporting evidence confirming the claimant's circumstances; eg, a medical certificate or financial circumstances.

If the claimant is in New Zealand unlawfully, no deportation action will be taken until the claim for refugee or protection status and any appeal to the Tribunal have been finally determined or the claimant withdraws the claim or appeal.

#### **E8.10.30 Renewal of temporary visas for Immigration and Protection Tribunal appellants**

If a claimant has appealed to the Tribunal, based on a decision made under part 5 and part 6 of the Immigration Act 2009, they are eligible to apply for further temporary visas until the final outcome of the appeal.

Immigration officers may grant a temporary visa in such cases to cover the period it is likely to take to determine the appeal.

## **E11.55 Requirements for participants in approved student exchange schemes**

Participants in approved student exchange schemes may be granted student visas for the length of their exchange provided they:

- a. meet the requirements under Generic Temporary Entry instructions for lodging an application for a temporary entry visa as set out at [E4](#); and
- b. apply from outside of New Zealand; and
- c. are bona fide applicants as set out at [E5](#); and
- d. meet health and character requirements as set out at [A4](#) and [A5](#).

### **E11.55.1 Evidence**

Participants must provide evidence to show that:

- a. they have been accepted into an approved student exchange scheme by the scheme organiser; and
- b. they meet outward travel requirements.

**Note:** Evidence of the travel arrangements to leave New Zealand at the end of the intended stay is:

- actual travel tickets (confirmed or open-dated) out of New Zealand to a destination to which the applicant has right of entry; or
- a written guarantee from the New Zealand guarantor that they will ensure that participants (and any dependants) will have outward bookings at the end of their stay in New Zealand, regardless of whether they complete the full term of the exchange.

### **E11.55.5 Participants who arrive in New Zealand without a student visa**

If participants arrive in New Zealand without a student visa, immigration officers may grant a student visa for the maximum period of stay for their scheme, provided that:

- a. there are special reasons why they have not obtained a visa; and
- b. they meet the requirements set out at E11.55.

### **E11.55.10 Partners and dependent children of student exchange scheme participants**

- a. Partners and dependent children of student exchange scheme participants may be granted visas that are current for the same period as the participants' visas, provided they meet the requirements for the particular category of visa they are applying for.
- b. Immigration officers must be satisfied that the exchange scheme allows participants to be accompanied to New Zealand by their partner and dependent children.
- c. Participants' partners may apply for work visas after their arrival, but they are subject to work visa criteria.

### **E11.55.15 Extending the stay for tourist reasons**

Participants who wish to remain in New Zealand for a further period as tourists may be granted visitor visas for a maximum of 3 months, provided that they meet the requirements and conditions for a visitor visa.

### **E11.55.20 Pastoral Care of International Students**

- a. Attendance at a school that is a signatory to the Education (Pastoral Care of International Students) Code of Practice 2016 is required where the student is studying under a school-to-school exchange scheme ([U4.15\(b\)\(i\)](#)).
- b. Attendance at a school that is a signatory to the Education (Pastoral Care of International Students) Code of Practice 2016 is not required for:
  - i. school students studying under a reciprocal exchange scheme managed by an Exchange Programme Organisation (EPO) approved by the Ministry of Education (see U4.15(b)(ii)); and
  - ii. tertiary students on approved exchanges.

## **V2.1 Visitor visa requirements**

To be granted a visitor visa applicants must:

- a. meet the requirements under Generic Temporary Entry instructions for:
  - i. lodging an application for a temporary entry class visa as set out at E4; and
  - ii. bona fide applicants as set out at E5; and
  - iii. health and character as set out at A4 and A5; and
- b. meet the funds or sponsorship requirements (see V2.20); and
- c. meet the onward travel requirements, if relevant (see V2.25); and
- d. be coming to New Zealand for a lawful purpose.

### **V2.1.1 Definition of 'lawful purpose' for visitors**

For the purposes of applying the 'lawful purpose' test in the provision relating to bona fide applicants (see [E5.1](#)), visitors are considered to be coming to New Zealand for a lawful purpose if:

- a. they are coming for such purposes as:
  - o holidaying;
  - o sightseeing;
  - o family and social visits;
  - o amateur sport;
  - o business consultation (see [V3.5](#));
  - o medical treatment (see [V3.40](#)); or
  - o guest of government visits (guest of government status is granted by the Visits and Ceremonial Office, Department of Internal Affairs).
- b. they are not intending to undertake employment (see [W2.2.1](#)) or a programme of study or training, with the exception of short-term study (see [V2.35](#) and [U2.5\(b\)](#)).

#### **Note:**

- ~ Entry for the purpose of marriage is also regarded as a 'lawful purpose'.
- ~ If the programme is offered by a private training establishment, the applicant must ensure that the primary requirements for satisfying sections 232 and 233 of the Education Act 1989, in respect of programmes of study, are met (see [U5.15](#)).
- ~ All education providers offering places to foreign students must be signatories to the Education (Pastoral Care of International Students) Code of Practice 2016 (see [U5.1\(b\)](#)).

## **V2.35 Short-term study in schools**

- a. Visitor visa holders can study without the need to obtain a student visa or a variation of conditions if they attend primary, intermediate, secondary, or composite school for a single period of study of up to three months per calendar year. The single period of study:
  - i. must start and finish within a calendar year; and
  - ii. must not be in term 1 if a visitor visa was held and a single period of study was undertaken in term 4 of the previous year.
- b. Visitor visa holders undertaking a single period of study in (a) above must attend a school that is a signatory to the Education (Pastoral Care of International Students) Code of Practice 2016, if at least one of the following applies:
  - i. they attend for more than two weeks; or
  - ii. they are fee-paying foreign students.
- c. Despite (b)(i) above, attendance at a school that is a signatory to the Education (Pastoral Care of International Students) Code of Practice 2016 is not required where the visitor visa holder is studying under a reciprocal exchange scheme managed by an Exchange Programme Organisation (EPO) approved by the Ministry of Education (see [U4.15](#)).

#### **WF4.5 Partners of holders of student visas who are supported by the New Zealand Aid Programme**

- a. Partners of New Zealand Aid Programme (NZAP)-supported students (see U11), may be granted a work visa valid for the duration of their partner's NZAP scholarship unless the NZAP-supported student has been granted a student visa under any one of the following scholarship programmes:
  - i. Short-Term Training Scholarships; or
  - ii. New Zealand Regional Development Scholarships; or
  - iii. English Language Training for Officials.
- b. Applicants must provide a completed work visa application form, fee, immigration levy and meet the generic requirements at [E4.5.5](#).
- c. Applicants under these instructions are not required to produce a job offer.
- d. Any work visas granted under these instructions may be endorsed with conditions that allow work for any employer.
- e. Applicants must have NZ\$4,200 available for their maintenance during the period of stay in New Zealand.
- f. Partners of NZAP-supported students (see U11), are not eligible for a temporary entry class visa in the 2 year period following completion of the NZAP-supported student's scholarship, unless they have written approval from the Ministry of Foreign Affairs and Trade (with the exception of a short-term visitor visa).
- g. Despite (f) above, partners of NZAP-supported students who have completed Short-Term Training Scholarships or English Language Training for Officials of less than six months in duration (see U11), are not eligible for a temporary entry class visa for one year following completion of the NZAP-supported student's scholarship, unless they have written approval from the Ministry of Foreign Affairs and Trade (with the exception of a short-term visitor visa).

## **WD2 Post-study work visa – open**

- a. People may be granted a work visa for a maximum of 12 months who:
  - i. meet the qualification requirements as set out at WD1.10; and
  - ii. apply no later than 3 months after the end date of their student visa for that programme of study or qualification or, if the qualification was a Doctoral Degree, no later than 6 months after the end date of their student visa; and
  - iii. have met requirements set out in U11.1(d) if their studies have been supported under the New Zealand Aid Programme.

**Note:** A person must have successfully completed the qualification stated as a condition on their student visa in order to meet the requirements of WD2(a)ii.

- b. To be eligible for a work visa, applicants must not previously have been granted a visa under these instructions unless they have undertaken and completed a second higher qualification that is either a New Zealand bachelor degree or post-graduate qualification and have studied that qualification in New Zealand for at least 30 weeks.
- c. Despite (b) an applicant may be eligible for a subsequent work visa if they have undertaken and completed a second higher qualification that is a New Zealand level seven qualification and they:
  - i. have studied that qualification in New Zealand for at least one academic year; and
  - ii. had commenced a programme of study towards that New Zealand qualification on or before 26 November 2012.
- d. Evidence of an offer of employment is not required.
- e. Applicants must provide:
  - i. a completed work visa application form, fee and immigration levy; and
  - ii. evidence that they have completed a qualification in New Zealand that **meets the requirements as set out at WD1.10**; and
  - iii. evidence that they have a minimum of \$4,200 in funds available to maintain themselves during their 12 month stay in New Zealand (travellers' cheques or bank documents in the applicant's name are acceptable); and
  - iv. evidence that the work visa application is being made no later than 3 months after the end date of their student visa for that programme of study or qualification.
- f. Any work visas granted under these instructions may be subject to conditions that allow work for any employer.

## **WI2.20 Canada Working Holiday Scheme**

- a. This scheme is available to young citizens of Canada aged 18 to 35 inclusive.
- b. To be eligible for a work visa under this scheme, applicants must:
  - i. be citizens of Canada; and
  - ii. have a minimum of NZ\$4,200 available funds for their maintenance during the period of stay in New Zealand; and
  - iii. agree to hold medical and comprehensive hospitalisation insurance that will remain current throughout their stay; and
  - iv. meet the requirements at [WI2.1.1\(b\)](#).
- c. Successful applicants will be granted a visa with the following conditions:
  - i. if the applicant is outside New Zealand, first entry must be made within 12 months of the visa being granted, and the visa will allow work and multiple entries to New Zealand for a maximum of 23 months from first arrival; or
  - ii. if the applicant is in New Zealand, the visa will allow work and multiple entries to New Zealand for a maximum of 23 months.
- d. Applicants under this scheme must lodge their application in the prescribed manner ([E4.50](#)).
- e. Applicants under this scheme may apply for a 12-month visa in the first instance and for a further visa up to their maximum entitlement of 23 months from the date of first arrival (or date the first working holiday visa was granted if they applied from within New Zealand), subject to meeting criteria under WI2.20.1 below.

### **WI2.20.1 Further visa requirements**

- a. To be eligible for a further work visa under this scheme in terms of WI2.20(e) above, applicants must:
  - i. be in New Zealand on a valid work visa granted under the Canada Working Holiday Scheme at the time of application for a further visa; and
  - ii. apply in the prescribed manner using a paper form (E4.50.1); and
  - iii. meet all the requirements of WI2.1.1, except (b)(ii) and (ix); and
  - iv. provide evidence of medical and comprehensive hospitalisation insurance that will remain current throughout the remainder of the period of stay.
- b. Applicants for a further work visa under this scheme are not required to provide evidence of funds for their maintenance unless requested by an immigration officer.

## **WI2.160 United Kingdom Working Holiday Scheme**

- a. This scheme is available to young citizens of the United Kingdom.
- b. To be eligible for a work visa under this scheme, applicants must:
  - i. be British citizens, ordinarily resident in the United Kingdom; and
  - ii. have a minimum of NZ\$350 per month available funds for their maintenance during the period of stay in New Zealand; and
  - iii. meet the requirements at [WI2.1.1\(b\) and \(d\)](#).
- c. Successful applicants will be granted a work visa with the following conditions:
  - i. if the applicant is outside New Zealand, first entry to New Zealand must be made within 12 months of the visa being granted. The visa will allow work for 12 months and multiple entries to New Zealand for a maximum of 23 months from first arrival; or
  - ii. if the applicant is in New Zealand, the visa will allow work for 12 months and multiple entries to New Zealand for a maximum of 23 months.
- d. Participants in this scheme must not work for a period exceeding 12 months. This may be in one consecutive period or interspersed throughout the total stay.
- e. Applicants under this scheme must lodge their application in the prescribed manner ([E4.50](#)).
- f. Applicants under this working holiday scheme may apply for a 12-month visa in the first instance and for a further visa up to their maximum entitlement of 23 months from the date of first arrival (or date the first working holiday visa was granted if they applied from within New Zealand), subject to meeting criteria under [WI2.160.1](#) below.

### **WI2.160.1 Further visa requirements**

To be eligible a further work visa under this scheme in terms of WI2.160(f) above, applicants must:

- a. be in New Zealand on a valid work visa granted under the United Kingdom Working Holiday Scheme at the time of application for a further visa; and
- b. apply in the prescribed manner using a paper form ([E4.50.1](#)); and
- c. meet all the requirements of [WI2.1.1](#), except (b)(ii) and (ix); and
- d. provide evidence of having a minimum of NZ\$350 per month available funds for their maintenance for the remainder of the period of stay.

## WI16.1 Who is eligible for a special work visa

- a. Applicants in New Zealand may be granted one work visa valid for 12 months if they have been certified by the New Zealand Police as being suspected victims of people trafficking.
- b. A further work visa may only be granted if:
  - i. the New Zealand Police or Immigration New Zealand determines the applicant's continued presence in New Zealand is required; and
  - ii. the applicant has not obstructed a New Zealand Police or Immigration New Zealand investigation; and
  - iii. an immigration officer determines that the applicant has personal circumstances that warrant the grant of a further work visa.
- c. Before making a decision on an application under (a) or (b) above, immigration officers should consult with Immigration New Zealand's Serious Offences Unit.

**Note:** Circumstances that may require the applicant's continued presence in New Zealand under WI16.1(b)(iii) may include, but are not limited to, where there is an ongoing police investigation and/or prosecution beyond the initial 12-month visa duration, and Immigration New Zealand or the New Zealand Police desire the applicant remain in New Zealand to continue their involvement in the case.

## **WI18.10 Evidential requirements**

To be granted a work visa with study conditions under these instructions, primary sector trainees must:

- a. provide a completed work visa application form, fee and immigration levy; and
- b. provide a letter of support/funding arrangements from their home government; and
- c. provide an offer of place from a high quality education provider (see [WI18.5.1 \(b\)](#)) that is a signatory to the Education (Pastoral Care of International Students) Code of Practice 2016; and
- d. agree to hold medical and comprehensive hospitalisation insurance that will remain current throughout their stay in New Zealand.

### **U3.10 Tuition fees**

- a. Applicants must provide evidence of payment of tuition fees.
- b. For applicants living outside New Zealand, evidence of payment is not required until after the application has been approved in principle.
- c. Despite (a), the following students are not required to provide evidence of tuition fee payment if they can meet the required exemption and provide evidence as below:

	<b>Exemption</b>	<b>Evidence required</b>
i	Exempt from tuition fees	Confirmation that the programme of study is exempt from fees or that the student is exempt from paying any fees
ii	Students participating in a Study Abroad or Non-award scheme under a study abroad partner agreement with a New Zealand Tertiary education institution	Confirmation from the New Zealand tertiary institution that tuition fees are being paid directly to them from a foreign tertiary institution or authorised third party provider on behalf of the foreign tertiary institution.
iii	New Zealand Aid Programme scholarship	Notice of the award of a full New Zealand Aid Programme scholarship.
iv	Home country government loan approval at a tertiary institution	Evidence that the loan has been applied for and confirmation from the tertiary institution that the fees will be paid directly to them.
v	Home country government loan approval at a private training establishment (PTE) for study at Bachelor's Degree and above	Evidence that the loan has been applied for and confirmation from the PTE that the fees will be paid directly to them.
vi	Foreign government-supported student	Meet the all requirements as applicable under U12.

### **U3.40 Students who wish to change their study conditions**

*See also Immigration Act 2009 ss 49, 52, 56*

- a. A further student visa or variation of conditions, for the purpose of changing programme of study, education provider and/or study location, will only be granted if an immigration officer is satisfied that:
  - i. the applicant meets the student requirements set out at U3.1; and
  - ii. the applicant has not breached their visa conditions as set out at E3.20; and
  - iii. the original student visa would have been granted for the proposed programme of study, education provider, and/or study location; and
  - iv. the applicant remains a bona fide applicant (see E5.1).
- b. Factors that an immigration officer may take into consideration when determining (a)(iii) and (a)(iv) above include, but are not limited to:
  - i. the time elapsed since the original visa was granted;
  - ii. whether the level and/or subject area of the proposed programme of study are significantly different from the original programme of study; and
  - iii. any relevant information held about the previous application(s) including advice from the original issuing branch (see [E7.1.1](#)).
- c. Applicants who have received New Zealand Aid Programme funding within the two years prior to their application to change programme of study and/or education provider being made, must also provide evidence that the Ministry of Foreign Affairs and Trade supports the change of programme of study or education provider and that any scholarship continues.
- d. Applicants who wish to change their programme of study and/or education provider may provide evidence of payment of tuition fees after the application has been approved in principle.

#### **U4.15 Exchange students**

- a. Students studying under reciprocal exchange schemes approved by the Minister of Education are considered to be domestic students for the purposes of attending primary and secondary schools and are exempt from paying foreign tuition fees (see [U3.35.5](#)).
- b. There are two types of New Zealand student exchange schemes under which international students may be enrolled in New Zealand schools without paying international fees:
  - i. school-to-school student exchange schemes run by a school that is a signatory to the Education (Pastoral Care of International Students) Code of Practice 2016 (see [E11.55.20](#)); and
  - ii. student exchange schemes run by approved exchange programme organisations (see E11.55.20).

**Note:** The general requirements for participants in approved student exchange schemes are set out at E11.55.

#### **U4.20 Vocational trainees**

- a. Only the following applicants may be granted a student visa as a vocational trainee:
  - i. Air New Zealand trainees that meet the requirements set out at U6.35.5;
  - ii. Nautical students that meet the requirements set out at U9.5;
  - iii. Religious trainees that meet the requirements set out at U9.10; and
  - iv. New Zealand Aid Programme Short-Term Training **Scholarship** (STTS) trainees that meet the requirements set out at U9.15.
- b. Applicants who intend to undertake industry training or a modern apprenticeship, not listed at [U4.20\(a\)](#) above, or U9, must apply for a work visa (see [WK](#)).

## **U5.1 Status of education providers and programmes**

- a. All education providers must certify in their offers of places to foreign students (see U3.5) that the programme of study or training scheme offered complies with foreign student requirements for different kinds of education providers (see U5.5-U5.20).
- b. All education providers offering places to foreign students must be signatories to the Education (Pastoral Care of International Students) Code of Practice 2016.
- c. Any queries on the status of programmes or training schemes offered by private training establishments should be referred to the Service Delivery Unit, Quality Assurance Division, New Zealand Qualifications Authority (NZQA), PO Box 160, Wellington.
- d. Students will not be granted a student visa to undertake a programme of study or training scheme offered at an education provider that holds a Category Four status under the NZQA's External Evaluation Review (EER) quality assurance system.
- e. Immigration New Zealand (INZ) may suspend the processing of applications for student visas for study at an education provider where at least one of the following applies:
  - i. the offered programme of study or training scheme does not comply with foreign student requirements as set out in U5.5 to U5.20;
  - ii. the education provider is not complying with its obligations under the Immigration Act, immigration regulations, or immigration instructions;
  - iii. INZ has been informed by education agencies that the education provider is not complying with its obligations under the Education Act and education regulations.
- f. Before a decision is made to suspend the processing of student visas, the following will be taken into account:
  - i. evidence of the non-compliance; and
  - ii. reasons for the non-compliance; and
  - iii. the duration, frequency, and severity of the non-compliance.
- g. INZ may resume the processing of student visas if it is satisfied that the education provider is complying with its obligations.

## **U6.35 Visas for the length of a programme of study**

Students may be granted a student visa for the length of their programme of study, regardless of the period for which they have paid their tuition fees, as specified in:

- a. Students Online Initiative (see U6.35.1); or
- b. Aviation students instructions (U6.35.5).

### **U6.35.1 Students Online Initiative**

- a. Students may be granted a student visa for the length of their programme of study if the:
  - i. student has an offer of a place with an education provider with which INZ has a Memorandum of Understanding for the Students Online Initiative which allows for the grant of visas for the length of programme of study; and
  - ii. education provider supports the grant of a length of programme of study visa.
- b. Evidence of the education provider support to grant a length of a programme of study visa must be provided.

### **U6.35.5 Aviation students**

- a. Aviation students may be granted a student visa for the length of their programme of study if:
  - i. the student has an offer of place from an aviation training provider that is:
    - o certified by the Civil Aviation Authority of New Zealand; and
    - o a signatory to the Education (Pastoral Care of International Students) Code of Practice 2016 (see **U3.5** and **U5.1**); and
  - ii. the aviation training provider supports the grant of a length of programme of study visa; and
  - iii. the full first term of tuition fees have been paid.
- b. Evidence of the aviation training provider's support to grant a length of a programme of study visa must be provided.
- c. Despite (a)(iii), evidence of tuition fee payment is not required where the aviation student is an Air New Zealand trainee and provides a guarantee from Air New Zealand.

#### **U9.15 New Zealand Aid Programme Short-Term Training Scholarship (STTS) trainees**

- a. The STTS scheme is part of the New Zealand Aid Programme and provides partner governments with the opportunities to develop new competencies in identified areas of need as well as to upskill their work force. Training may involve placement with a New Zealand government department, a private training establishment, or at a tertiary institution. Trainees are provided with entitlements for accommodation and maintenance whilst on this scheme.
- b. Applicants providing evidence of an award under the STTS scheme may be granted a student visa for the period of their award up to a maximum period of 12 months.

## **U11 New Zealand Aid Programme-supported students**

- a. A New Zealand Aid Programme-supported student receives funding from the New Zealand Government under the following schemes:
  - i. New Zealand Development Scholarships;
  - ii. Short-Term Training Scholarships;
  - iii. Commonwealth Scholarships;
  - iv. New Zealand Regional Development Scholarships;
  - v. English Language Training for Officials;
  - vi. New Zealand Pacific Scholarships;
  - vii. New Zealand Association of South East Asian Nations (ASEAN) Scholars Award.
- b. The objective of the scholarships is for candidates to gain knowledge and skills in specific subject areas that will assist in the development of their home country.
- c. Recipients are required to return to their home country for at least two years after the completion of their scholarship to apply these new skills and knowledge in government, civil society or private business organisations.
- d. Despite (c) above, NZAP-supported students who have completed Short-Term Training Scholarships or English Language Training for Officials of less than six months in duration are required to return to their home country for at least one year after the completion of their scholarship.

## **U11.1 New Zealand Aid Programme (NZAP)-supported students undertaking employment**

*See also Immigration Act 2009 ss 52, 56*

- a. New Zealand Aid Programme (NZAP)-supported students may be granted conditions on their student visa to allow them to work during the academic year for up to 20 hours per week, during any holidays within the academic year for up to 20 hours per week, and full-time during the Christmas-New Year holiday period unless they are studying under the following schemes:
  - i. Short-Term Training Scholarships; or
  - ii. New Zealand Regional Development Scholarships; or
  - iii. English Language Training for Officials.

**Note:** NZAP-supported students may also be eligible for full-time work rights during scheduled vacation periods.

See [U13.15.10](#)

- b. With the exception of the schemes listed under (a), NZAP scholars may be granted work visas at the completion of their programmes of study for qualification-related work experience for the minimum time needed to complete practical work requirements.

**Note:** NZAP-supported senior medical and pharmacy students may be granted a work visa for their internship/registration year.

- c. NZAP-supported students are not permitted to:
  - i. work in self-employment; or
  - ii. provide commercial sexual services; or
  - iii. act as an operator of a New Zealand business of prostitution; or
  - iv. invest in a business of prostitution (see [E7.40](#)).
- d. Any NZAP-supported student, or their partner or dependent children, may only be granted a visa for New Zealand in the two-year period following completion of the NZAP-supported student's scholarship, with written approval from the Ministry of Foreign Affairs and Trade (with the exception of a work visa to complete programme of study requirements or, if the applicant is outside New Zealand, a short-term visitor visa).
- e. Despite (d) above, where a NZAP-supported student has completed a Short-Term Training Scholarships or English Language Training for Officials of less than six months in duration, the NZAP-supported student, their partner or dependent children may only be granted a visa for New Zealand in the one year period following completion of their scholarship or training, with the written approval from the Ministry of Foreign Affairs and Trade (with the exception of a work visa to complete programme of study requirements or, if the applicant is outside New Zealand, a short-term visitor visa).

**Note:** See [WF4.5](#) for work instructions for partners of holders of student visas who are NZAP-supported.

## **U14.20 Provider requirements**

### **U14.20.1 Pathway pilot entry criteria**

- a. To qualify for entry to the Pathway student visa pilot, an education provider must:
  - i. be invited by Immigration New Zealand to be a pilot participant; and
  - ii. have signed the Pathway Student Visas - Pilot Participation Declaration agreeing to the requirements as set out at U14.20.10; and
  - iii. be either a school, a university or hold a Category One or Two rating under New Zealand Qualifications Authority's (NZQA) External Evaluation and Review framework; and
  - iv. have a minimum 90% student visa application approval rate over the 2014/15 financial year or 2016 calendar year (12 month period); and
  - v. comply with the legislative requirements as set out under the Education Act 1989 to offer programmes of study to foreign students ([U5.5 to U5.20](#)); and
  - vi. be a signatory to the Education (Pastoral Care of International Students) Code of Practice 2016.

### **U14.20.5 Eligible pathways**

- a. All pathways must demonstrate academic progression to the second or subsequent programme of study building on the previous study.
- b. All consecutive programmes of study that demonstrate progression are eligible to be included in the pilot with the exception of the following pathways:
  - i. Any English language programme of study to any tertiary sector Level 1–4 Certificate on the New Zealand Qualifications Framework (NZQF); and
  - ii. All pathways within and between tertiary sector NZQF Levels 1–4 Certificates; and
  - iii. Secondary school to any tertiary sector NZQF Levels 1–4 Certificates.
- c. Breaks between consecutive programmes of study must not exceed 16 weeks
- d. Only education providers who meet the requirements set out under U14.20.1 can offer a joint pathway in conjunction with one another.

### **U14.20.10 Formal agreement between qualifying education providers**

- a. To ensure a student's pastoral care needs are met, qualifying education providers who intend offering an education pathway in conjunction with one another must enter into a formal agreement.
- b. The formal agreement must include and set out the following processes and arrangements:
  - i. The application process (joint covering letter with two/three offers of place)
  - ii. Pastoral care obligations
  - iii. Handover arrangements in transition periods between programmes of study/education providers
  - iv. The process if a significant gap exists between completion of a programme of study and the start of a second or subsequent programme of study or in the event some papers are failed and cannot be repeated within a 16 week period.
  - v. The process if conditional entry requirements for second or subsequent programmes of study are not met
  - vi. The process if the student fails to attend and/or make satisfactory progress ([E3.20\(d\)](#))
  - vii. The process if the student wishes to leave intended pathway
  - viii. The obligation to notify INZ where a pathway student:
    - requires additional time to complete a programme of study and time required is likely to exceed 16 weeks; or
    - fails to meet the conditional entry requirements for a second or subsequent programme of study; or
    - fails to enrol for a subsequent programme of study; or
    - fails to attend and/or make satisfactory progress; and
    - has their enrolment in a programme of study terminated.
- c. Where an education pathway is offered by a single qualifying education provider, the formal agreement processes set out at (b) must be met.
- d. The signed formal agreement does not have to be submitted with a pathway student visa application, however it must be made available to INZ if requested.

#### **U14.20.15 Non-compliance with formal agreement requirements or when under active investigation by Immigration New Zealand**

Where non-compliance, other than of a minor nature, with any of the matters agreed to in the Pathway Student Visas - Pilot Participation Declaration, or where the pathway education provider is under active investigation by INZ for offences committed under part 10 of the Immigration Act 2009 the following process may occur:

- a. INZ will suspend the processing of any student visa applications related to an existing pathway agreement immediately.
- b. The non-compliant pathway education providers will be advised in writing of the suspension and will be sent a report detailing the non-compliance, and will be given 30 days to remedy the non-compliance.
- c. Resolution (or satisfactory progress towards resolution) of the non-compliance to the satisfaction of INZ within the 30 day period will see the suspension lifted and processing of related pathway student visa applications will resume.
- d. The Ministry of Business, Innovation and Employment or the New Zealand Qualifications Authority may conduct an investigation three to six months later to assess the effectiveness of the remediation undertaken. If the remediation is deemed inadequate or ineffective, the suspension can be re-imposed or the provider may be removed from the pathways pilot and current pathway student visa holders become liable for deportation.
- e. If INZ is not satisfied that the non-compliance has been addressed or satisfactory progress has been made towards resolution within the 30 day period, the suspension of related student visa processing will continue (until resolution occurs).
- f. Failure to address or make satisfactory progress towards resolving the non-compliance may result in removal from the pathways pilot, and current student visa holders becoming liable for deportation.

**Note:** INZ may rely on the advice of the Ministry of Education and/or the New Zealand Qualifications Authority in determining whether resolution has been reached or satisfactory progress has been made towards resolution.

## **Appendix 3: Amendments to Residence and Temporary Entry instructions effective on and after 28 August 2017**

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## A5.5 Character checks

See also *Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010* Regs 5(2)(d)(iii), 6(2)(d)(iv), 10(2)(e)(iii)

- a. Character checks must be carried out for the following categories of applicant:
  - i. those aged 17 and over applying for residence class visas; and
  - ii. those aged 17 and over applying for temporary entry class visas who intend to stay in New Zealand for 24 months or longer; and
  - iii. other applicants for temporary entry class visas who warrant a character check if the immigration officer decides it is necessary.

**Note:** the 24-month period in A5.5(a)(ii) above includes time already spent in New Zealand prior to the application being made.

- b. It is a mandatory requirement (see R2.40) for first time applicants for a residence class visa aged 17 and over to obtain a police or similar certificate from:
  - i. the applicant's country of citizenship; and
  - ii. each country in which the applicant has lived for 12 months or more (whether on one visit or intermittently) in the last 10 years (but see [A5.10.1](#)).

Applicants for a further residence class visa under [RV2](#) or [RV4](#) will not usually need to submit a police or similar certificate, unless specifically asked to by an immigration officer. Applicants for a further residence class visa applying under any other category are required to submit a police or similar certificate as if they were applying for residence for the first time.

**Note:** the requirement in A5.5(b) above does not apply to Australian citizens, holders of a current Australian permanent residence visa and holders of a current Australian resident return visa, applying for a resident visa at an immigration control area.

- c. If required, applicants aged 17 and over applying for a temporary entry class visa must obtain a police or similar certificate from:
  - i. their country of citizenship; and
  - ii. from any country in which they have lived for five or more years (whether on one visit or intermittently) since attaining the age of 17 years.
- d. Despite (c) above, student visa applicants do not have to provide a police or similar certificate until they are aged 20 or over if they:
  - i. held a student visa when they turned 17; and
  - ii. have held consecutive student visas (or interim visas with study conditions) since the date they turned 17; and
  - iii. are applying for a further student visa.
- e. Despite (d) above, a police or similar certificate is required if an immigration officer decides it is necessary.

### A5.5.1 Impact of the Criminal Records (Clean Slate) Act 2004

- a. When assessing whether a person meets an applicable character requirement, an immigration officer must be aware that New Zealand convictions may be covered by the Criminal Records (Clean Slate) Act 2004 (Clean Slate Scheme) and that if so, an eligible individual is not required to declare New Zealand convictions.
- b. If Immigration New Zealand (INZ) holds any information that a person has these New Zealand convictions, and that person is an eligible individual under the Clean Slate Scheme, this information cannot be used when assessing whether the person meets the applicable character requirements.
- c. The information referred to in (b), above, includes any prior police certificates, any information INZ holds in its records (including its Application Management System), and any other information which may have been gathered from a public source.
- d. If a person is an eligible individual under the Clean Slate Scheme, immigration officers cannot, under any circumstances, request or require that an individual disregard the effect of the Clean Slate Scheme when answering questions about his or her New Zealand criminal record, or disregard the effect of the Clean Slate Scheme and disclose, or give consent to the disclosure of, his or her criminal record. Doing so is an offence under the Criminal Records (Clean Slate) Act 2004. However, if the persons voluntarily declares criminal convictions that are subject to the Clean Slate Scheme, this information can be used to assess whether the person meets the applicable character requirements.

## **Appendix 4: Rescinded of immigration instructions effective on and after 28 August 2017**

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## **U10.1 Student visas and permission to study for refugee or protection status claimants**

See also Immigration Act 2009 s 378

- a. The only programme of study refugee or protection status claimants or their partner or dependent children may undertake without the need for a student visa is an English for Speakers of Other Languages (ESOL) programme of study at a New Zealand technical institute.
- b. Permission to attend an ESOL programme of study may be given by special direction varying the conditions of the claimant's temporary entry class visa, and an immigration officer must inform the claimant of the special direction by letter.
- c. Claimants not eligible for a student visa under these provisions may apply under the provisions for student visas at [U3](#), but must meet all the requirements, including payment of the appropriate fee.
- d. Claimants are exempt from paying the immigration levy (see [A6.11.20](#)).
- e. For information on the eligibility of refugee or protection status claimants for other temporary visas (see E8.10).

### **U10.1.1 Claimants' school-aged children**

- a. Claimants' school-aged children wishing to study at primary or secondary school may be granted student visas.
- b. Applications must be made in the prescribed manner (see [E4.50](#)); but an appropriately delegated immigration officer may waive:
  - i. the application fee; and
  - ii. the requirement to produce evidence of funds or sponsorship; and
  - iii. the requirement to produce evidence of travel tickets or onward travel arrangements.
- c. Claimants' school-aged children are exempt from paying the immigration levy.

## **R5.50 Lapsing an application**

### **R5.50.1 Lapsing an application on the grounds that the applicant has failed to provide their travel document to INZ**

- a. Unless paragraph (b) applies, an application will be considered to be lapsed, and must be declined, if a principal applicant has not provided their travel document to INZ for the grant of a residence class visa within 6 months from the date of advice that the application has met the requirements for approval.
- b. Immigration officers must consider any relevant circumstances in deciding whether or not to lapse and then decline an application, including but not limited to:
  - i. the death of a family member,
  - ii. illness,
  - iii. loss or theft of documentation,and they may, if appropriate, extend the 6-month period referred to in paragraph (a) above.
- c. Any application lapsed under this provision will not result in the refund of the application fee and/or immigration levy.

## **Appendix 5: Other amendments to the Operational Manual effective on and after 28 August 2017**

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## **WJ2.10 Fit and proper person test**

For the purpose of determining whether or not a director or senior manager of the New Zealand employer is a fit and proper person, INZ will take into account:

- a. whether the person:
  - i. at any time, has been declared bankrupt or been a director of a company that has been put into receivership or liquidation;
  - ii. at any time, has been a director or senior manager of a company that has failed to meet its obligations under relevant New Zealand employment and immigration law, and immigration instructions;
  - iii. has been convicted of an offence involving dishonesty in New Zealand or a foreign country;
  - iv. has been involved in business fraud or financial impropriety; or
  - v. has ever been convicted of any offence arising in the course of, or resulting from, business dealings; and
- b. any relevant feedback received from the Ministry for Primary Industries or Maritime New Zealand, (see WJ2(d)); and
- c. whether, bearing in mind all available evidence, there is reason to believe that the person will not meet their obligations under the foreign crew of fishing vessels instructions.

### **WJ2.10.1 Applications usually deferred**

- a. Applications for an Approval in Principle to recruit foreign crew of fishing vessels will usually be deferred for up to six months if, at the time the application is assessed, a director or senior manager of the New Zealand employer:
  - i. has been charged with any offence which, on conviction, would make WJ2.10(a)(iii) apply to that person; or
  - ii. is under investigation for such an offence.
- b. At the time an application for is assessed, immigration officer must:
  - i. defer the decision on the application for up to six months; and
  - ii. inform the applicant of the decision to grant a deferral and the period of the deferral, in writing; and
  - iii. await the outcome of the charge or investigation; and
  - iv. if removal of the character impediment is confirmed, continue processing the application; and
  - v. if the character impediment is not removed, refer to the Area or Operations Manager for their decision on whether to grant a second or subsequent deferral.

### **WJ2.10.5 Second and subsequent deferral periods**

- a. In cases where the deferral period is coming to an end and the director or senior manager is still awaiting the outcome of the charge or investigation, a second or subsequent deferral period may be imposed.
- b. A decision on a second or subsequent deferral will only be made after appropriate consultation with Operations Support, Visa Services and the Legal Services of the Ministry of Business, Innovation and Employment about:
  - i. whether a second or subsequent deferral is justified in the circumstances; and
  - ii. whether the deferral period is reasonable, given the likely timeframe of any outcome being reached and the efforts the applicant is making to reach an outcome.
- c. A decision to grant a second deferral must be made by an Area or Operations Manager or above.
- d. If the character impediment is not removed by the end of the second deferral period, the Area or Operations Manager may impose a subsequent deferral under the provisions at WJ2.10.5.
- e. The length of the subsequent deferral period will be decided according to the length of time it is expected for a decision on the charge or investigation to be made.
- f. The applicant must be informed in writing of any decision to impose a second or subsequent deferral and the period of the deferral.

### **U3.35 Definition of 'domestic student'**

For the purposes of student instructions a 'domestic student' means a domestic student as defined in section 2 of the Education Act 1989. The Ministry of Education holds a complete list of who is considered to be a domestic student for the purpose of fee payment and enrolment.

#### **U3.35.1 Primary and secondary schooling domestic students who do not require a student visa, interim visa with study conditions, or limited visa**

The following people are considered to be domestic students for the purpose of attending primary and secondary schools and do not require a student visa, interim visa with study conditions, or limited visa in order to undertake study in New Zealand:

- a. New Zealand citizens, including students from Tokelau, the Cook Islands and Niue;
- b. New Zealand residents;
- c. New Zealand permanent residents;
- d. People who have a letter from the Protocol Division of the New Zealand Ministry of Foreign Affairs and Trade confirming that they are entitled to any immunity from jurisdiction under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971 for the current school year, until the end of the year in which their diplomatic or consular status expires.
- e. Members of the armed forces of any country, members of its civilian component, or crew members of any craft transporting such people to New Zealand, while in New Zealand:
  - i. at the request or with consent of the Government of New Zealand; and
  - ii. in the ordinary course of the member's duty or employment.

#### **U3.35.5 Primary and secondary domestic students who require a student visa, interim visa with study conditions, or limited visa**

The following people require a student visa, interim visa with study conditions, or limited visa in order to undertake study in New Zealand but are considered to be domestic students for the purposes of attending primary and secondary schools and are exempt from paying foreign tuition fees:

- a. Dependent children of any person who is in New Zealand to study under an exchange programme approved by the New Zealand Government.
- b. Children whose application for a residence class visa is under consideration and who are the dependent children of any person who is a New Zealand citizen or the holder of a residence class visa.
- c. Children whose application for New Zealand citizenship is under consideration and who are the dependent children of a New Zealand citizen.
- d. Dependent children of any person who is onshore and the holder of a valid work visa other than those excluded under U8.20.
- e. Students who have, or dependent children of any person who has, made a claim to be recognised as a refugee or protected person in accordance with Part 5 of the Immigration Act 2009.
- f. Dependent children of a foreign student enrolled in any Doctor of Philosophy (PhD) programme in a New Zealand university.
- g. Dependent children of any person who, during the current calendar year, last ceased to hold a special temporary visa (see H2).
- h. Students who have entered New Zealand for the purposes of adoption and:
  - i. whose adoption application before the New Zealand Family Court (where the Final Order will entitle that student to education as a domestic student) is supported by the Department of Child, Youth and Family Services and who has a letter from the Department of Child, Youth and Family Services confirming this support; or
  - ii. who are the subject of an Interim Order of Adoption granted by the New Zealand Family Court under section 5 of the Adoption Act 1955 (where the Final Order will entitle that student to education as a domestic student).
- i. People who are in the custody of the Chief Executive of the Ministry of Social Development pursuant to any of the following orders:
  - i. an order, pursuant to sections 78, 101 or 238(1)(d) of the Children, Young Persons and their Families Act 1989, in favour of the Chief Executive of the Ministry of Social Development; or
  - ii. an order, pursuant to section 110 of the Children, Young Persons and their Families Act 1989, appointing the Chief Executive of the Ministry of Social Development as sole guardian; or
  - iii. an order, pursuant to section 33 of the Care of Children Act 2004, whereby a child or young person is placed under the Guardianship of the Family Court or the High Court and the Chief Executive of the Ministry of Social Development is appointed as agent of the court with power and discretion to place the child.
- j. Dependent children of any person who is the holder of a New Zealand Aid Programme Scholarship.

- k. Dependent children of any person who is the holder of a visitor visa granted under [V3.115](#).
- l. Dependent children of military visa holders, while the military visa holder is in New Zealand.
- m. Children granted a student visa under [U10.5](#).
- n. Students who are in New Zealand to study under an exchange scheme approved by the Ministry of Education (see [E11.45](#)).

#### **U3.35.10 Tertiary sector domestic students who do not require a student visa, interim visa with study conditions, or limited visa**

The following people are considered to be domestic students for the purpose of attending an education provider in the tertiary sector (see [U5.20](#)) and do not require a student visa, interim visa with study conditions or limited visa in order to undertake a programme of study in New Zealand:

- a. New Zealand citizens, including students from Tokelau, the Cook Islands and Niue.
- b. New Zealand residents.
- c. New Zealand permanent residents.
- d. People who have a letter from the Protocol Division of the New Zealand Ministry of Foreign Affairs and Trade confirming that they are entitled to any immunity from jurisdiction under the Diplomatic Privileges and Immunities Act 1968 or the Consular Privileges and Immunities Act 1971 for the current academic year, until the end of the year in which their diplomatic or consular status expires.
- e. Despite (d) above, dependent children aged 21 and over of Diplomatic, Consular or Official staff, who wish to undertake tertiary study in New Zealand, may not be eligible for domestic student status and may be required to pay foreign student fees (see [H2.1\(b\)](#)).
- f. A person who has made a claim to be recognised as a refugee or a protected person in accordance with Part 5 of the Immigration Act 2009, and who is the holder of a valid temporary entry class visa.
- g. A person who has been recognised as a refugee or a protected person in accordance with Part 5 of the Immigration Act 2009, and whose application for residence is being processed.
- h. A person who is enrolled at a tertiary education provider for the purpose of participating in industry training funded under the Industry Training Act 1992.

#### **U3.35.15 Tertiary sector domestic students who require a student visa, interim visa with study conditions, or limited visa**

The following people require a student visa, interim visa with study conditions, or limited visa in order to undertake study in New Zealand but are considered to be domestic students for the purposes of attending an education provider in the tertiary sector and are exempt from paying foreign tuition fees for foreign students:

- a. Students enrolled in any Doctor of Philosophy (PhD) programme, in any New Zealand university (see [U5.20](#)).
- b. A person who is in New Zealand to study under a New Zealand Government approved exchange programme at a tertiary education provider.

## A5.20 Applicants ineligible for a residence class visa or entry permission

See also Immigration Act 2009 ss 15, 16, 17, 73, 74

- a. Any person described in section 15 or 16 of the Immigration Act 2009 must not be granted a residence class visa or entry permission, and their application will be declined. The only exceptions are where:
  - i. the person is otherwise eligible for the grant of a visa and entry permission under immigration instructions (see [S2](#)), and
  - ii. a special direction under section 17 of the Immigration Act 2009 has been given to that person, authorising the grant of a visa and entry permission.

**Note:** Persons described in section 15 or 16 must not be issued with a temporary entry class visa either (see A5.40).

- b. Under section 15, the following people are not eligible for a visa or entry permission to enter or be in New Zealand:

Any person who -

- i. at any time (whether before or after the commencement of the Immigration Act 2009), has been convicted of any offence for which that person has been sentenced to imprisonment for a term of five years or more, or for an indeterminate period capable of running for five years or more; or
- ii. at any time within the preceding 10 years (whether before or after the commencement of the Immigration Act 2009), has been convicted of any offence for which that person has been sentenced to imprisonment for a term of 12 months or more, or for an indeterminate period capable of running for 12 months or more; or
- iii. is subject to a period of prohibition on entry to New Zealand under section 179 or 180 of the Immigration Act 2009; or
- iv. at any time (whether before or after the commencement of the Immigration Act 2009) has been removed or deported from New Zealand under any enactment; or

**Note:** This provision does not apply to persons: deported from New Zealand under section 158 of the Shipping and Seaman Act 1952; or, deported from New Zealand under section 20 of the Immigration Act 1964 on the grounds of being convicted of an offence against section 14(5) or 15(5) of that Act or, who were subject to a removal order under section 54 of the Immigration Act 1987, if the removal order has expired or had been cancelled; or, deported under the Immigration Act 2009, **but is not, or is no longer, subject to a period of prohibition on entry under section 179 or 180.**

- v. is excluded from New Zealand under any enactment; or
- vi. has, at any time, been removed, excluded, or deported from another country.

Paragraphs (b)(i) and (ii) above apply:

- o Whether the sentence is of immediate effect or is deferred or is suspended in whole or in part
- o Where a person has been convicted of two or more offences on the same occasion or in the same proceedings, and any sentences of imprisonment imposed in respect of those offences are cumulative, as if the offender had been convicted of a single offence and sentenced for that offence to the total of the cumulative sentences
- o Where a person has been convicted of two or more offences, and a single sentence has been imposed in respect of those offences, as if that sentence had been imposed in respect of a conviction for a single offence.

- c. Under section 16 of the Immigration Act 2009, the following people are not eligible for a visa or entry permission to enter or be in New Zealand:

Any person who the Minister has reason to believe:

- o is likely to commit an offence in New Zealand that is punishable by imprisonment; or
- o is, or is likely to be, a threat or risk to security; or
- o is, or is likely to be, a threat or risk to public order; or
- o is, or is likely to be, a threat or risk to the public interest; or
- o is a member of a terrorist entity designated under the Terrorism Suppression Act 2002.

- d. Despite sections 15 and 16 of the Immigration Act 2009, entry permission must be granted to the holder of a:

- o permanent resident visa; or
- o resident visa granted in New Zealand; or
- o the holder of a resident visa arriving in New Zealand for a second or subsequent time as the holder of the visa.

## A22.10 Collection of biometric information

See also Immigration Act 2009 ss 60, 111, 120, 149(1)(e), 287, 288

- a. An immigration officer may require a person who applies for entry permission (irrespective of whether the application is still being considered, or whether entry permission has been granted or refused) to provide biometric information:
  - i. at any time before the person leaves the immigration control area, designated place, or prescribed place at which the application is made; and
  - ii. if the application is not made in New Zealand, at any time before the person leaves the immigration control area or prescribed place at which he or she arrives in New Zealand.
- b. The following persons must allow biometric information to be collected from him or her:
  - i. A person applying for a visa.
  - ii. A person applying for entry permission.
  - iii. A person leaving New Zealand who is not a New Zealand citizen.
  - iv. A refugee or protection status claimant or a person whose recognition as a refugee or protected person is being investigated (note that this may only be required by a refugee and protection officer or by an agent or person on behalf of a refugee and protection officer).
  - v. A person subject to section 288 of the Act (see A22.15).
  - vi. A person liable for deportation or turnaround, where biometrics are required to meet the transit or entry requirements of any country to which or through which the person is to travel.
- c. If a person applying for a visa or entry permission fails to allow the biometric information to be collected, the Minister or an immigration officer may:
  - i. refuse to grant the visa or entry permission applied for; or
  - ii. revoke any entry permission already granted.

**Note:** Entry permission may be revoked at any time before the person leaves the immigration control area, designated place, or prescribed place.

- d. Biometric information in the form of a photograph of all or part of a person's head and shoulders will normally be required from all visa applicants, applicants for entry permission, non-New Zealand citizens who are leaving New Zealand, and persons covered by (e) below.
- e. Biometric information will normally only be required from the following persons:
  - i. A person subject to section 288 of the Act (see A22.15).
  - ii. A person applying for a residence class visa for resettlement in New Zealand under the UNHCR Refugee Quota.
  - iii. A refugee or protection status claimant or person whose recognition as a refugee or protected person is being investigated.
  - iv. A person applying for entry permission at the border, who is being formally interviewed by an immigration officer.
  - v. A person liable for deportation or turnaround, where one or more fingerprints are required to meet the transit or entry requirements of any country to which or through which the person is to travel (for example to 'sign' a travel document).
- f. Notwithstanding (d) and (e) above, an immigration officer may request biometric information in any case where authorised by the Act or regulations.

**Note:**

~ Fingerprints will not normally be required from persons under 14 years of age.

~ The powers under section 288 of the Act are not currently authorised to immigration officers and are not to be exercised by any officer until further notice.

## A23.1 Overview and legal framework

### A23.1.1 Overview

*See also Immigration Act 2009 ss 11, 20, 61*

- a. The Minister may, at any time, grant any type of visa to a person who is:
  - i. unlawfully in New Zealand; and
  - ii. not a person in respect of whom a deportation order is in force.
- b. The Minister's power to grant a visa in a special case has been delegated to officers with Schedule 3 delegations or above.
- c. As the grant of a visa under section 61 is a matter of absolute discretion, no person has the right to apply for a visa under section 61, and if a person purports to make such an application by requesting the grant of a visa under section 61:
  - i. the Minister or delegated immigration officer is not obliged to consider the request; and
  - ii. the Minister or delegated immigration officer is not obliged to make further enquiries or inquire into the circumstances of the person or any other person; and
  - iii. whether a request is considered or not, the Minister or immigration officer is not obliged to give reasons for any decision on it, other than that section 11 applies; and
  - iv. privacy principle 6 (which relates to access to personal information and is set out in section 6 of the Privacy Act 1993) does not apply to any reasons for any decision relating to the purported application; and
  - v. section 23 of the Official Information Act 1982 and section 27 of the Immigration Act 2009 (concerning the right of access to reasons for decisions) do not apply.
- d. In simple terms people who make requests under section 61:
  - i. have no right to apply for a visa under it;
  - ii. have full responsibility for ensuring that any and all information that might potentially be considered in any exercise of the section 61 discretion is put forward with their request;
  - iii. have no right to have their request considered;
  - iv. if their request is considered, have no right to be told why a particular decision was reached;
  - v. if their request is considered, have no right to have it considered against any particular immigration instructions.

## C4.70 Communications on refugee matters

### C4.70.1 Methods of communication

*See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 11*

Unless otherwise specified, any matter that is to be communicated between a refugee and protection officer and a claimant or person whose refugee or protection status is in question may be communicated:

- a. in the ordinary course of post; or
- b. by registered post addressed to the person's New Zealand address; or
- c. by fax

**Note:** if the address for service is the address of a lawyer or agent, service is effected only if the lawyer or agent signs a memorandum stating that he or she accepts service of the notice or document on behalf of the person.

### C4.70.5 Receipt of communication

*See also Immigration (Refugee and Protection Status Processing) Regulations 2010 reg 12*

- a. If a document is given, served, or supplied in the ordinary course of post or by registered post, the document is to be treated as having been received 7 days after the date on which it was posted.
- b. If a document is given, served, or supplied by fax, the document is to be treated as having been received 3 working days after the date on which it was sent.

## **D2.10 The requirement to be lawfully in New Zealand**

### **D2.10.5 Requirement to hold visa to be in New Zealand**

- a. No one other than a New Zealand citizen may be in New Zealand unless that person holds (or is deemed to hold) a current visa granted or deemed to have been granted under the Immigration Act 2009.
- b. Any person who is in New Zealand contrary to (a) above is considered to be in New Zealand unlawfully.

### **D2.10.10 Status of people lodging an application for a visa**

*See also Immigration Act 2009 s 14(2)*

- e. Lodging an application for a visa does not:
  - i. make the person's presence in New Zealand lawful; or
  - ii. give the person the right to remain in New Zealand while the application is being considered; or
  - iii. give the person the right to apply for or be granted any other visa while the application is considered; or
  - iv. inhibit any deportation procedures under the Immigration Act 2009 that may apply to the person.
- c. Despite (a) above, an interim visa may be granted to maintain the lawful status of a visa holder who has applied for a further visa.

### **D2.10.15 Deportation liability if person unlawfully in New Zealand**

*See also Immigration Act 2009 s 154*

A person unlawfully in New Zealand is liable for deportation.

### **D2.10.20 Categories of people who may be in New Zealand unlawfully**

Persons who may be in New Zealand unlawfully include any of the following:

- a. the former holder of a temporary visa (whether granted or deemed to have been granted) who remains in New Zealand after that temporary visa expires;
- b. the former holder of a limited visa who remains in New Zealand after the expiry of that visa;
- c. the former holder of a limited visa which is given a shortened duration who remains in New Zealand after the expiry of that visa;
- d. a person whose residence permit was revoked under the Immigration Act 1987 before commencement of Part 12 of the Immigration Act 2009 and who did not:
  - i. appeal against the revocation; or
  - ii. apply for and be granted a temporary permit under section 25(1)(d) of the Immigration Act 1987 before the revocation of the residence permit became effective.
- e. a child born in New Zealand on or after 1 January 2006 and deemed to be unlawfully in New Zealand under sections 373 and 374 of the Immigration Act 2009 (see [A17.5](#)).
- f. any of the following people who are liable for turnaround to whom section 115 of the Immigration Act 2009 applies:
  - i. a person to whom a visa waiver applies and who fails to apply for a visa and entry permission or is refused a visa; or
  - ii. a person to whom a visa waiver does not apply and who is not the holder of a visa granted under the Immigration Act 2009; or
  - iii. a person who holds a visa but:
    - o the visa is subsequently cancelled under section 64(1)(ab),(b), (c), (d), or (e) of the Immigration Act 2009; or
    - o the visa is cancelled under section 67 of the Immigration Act 2009 while the person is in an immigration control area (unless some other visa is granted to the person or the person is a New Zealand citizen); or
  - iv. a person who is a stowaway; or
  - v. a person who after arriving in New Zealand, has their transit visa cancelled by an immigration officer under section 90 of the Immigration Act 2009; or
  - vi. a person who is the holder of a transit visa and the transit period concerned has expired.

### **D2.10.25 People unlawfully in New Zealand must leave**

*See also Immigration Act 2009 ss 18, 19*

- a. From the moment a person is in New Zealand unlawfully, they are obligated to leave New Zealand unless they are subsequently granted a visa.
- b. The obligation to leave arises if the person is unlawfully in New Zealand because:
  - i. their visa has expired; or

- ii. they entered New Zealand without a visa; or
  - iii. they entered New Zealand without entry permission; or
  - iv. they are unlawfully in New Zealand for any other reason.
- c. All people seeking visas to enter New Zealand will be advised of their obligation to leave New Zealand if they are in New Zealand unlawfully.
  - d. The obligation for a person unlawfully in New Zealand to leave New Zealand arises whether or not they are aware of their obligation to leave or of their liability to be deported from New Zealand.

#### **D2.10.30 People unlawfully in New Zealand arrested for other offences**

Sometimes, people unlawfully in New Zealand are arrested by the New Zealand Police (Police) and placed in custody because they have committed other offences. Because action in relation to other offences takes precedence over deportation, it may not be possible to proceed with deportation immediately. If it is still appropriate to deport them, then a deportation order should be served and the officer should liaise with the Police to determine how the deportation can best be effected.

## **D2.15 Deportation liability: other grounds**

### **D2.15.1 Deportation liability if person's visa granted in error**

*See also Immigration Act 2009 s 155*

A person is liable for deportation if the Minister of Immigration (the Minister) or an immigration officer determines that:

- a. their visa was granted as a result of an administrative error; and
- b. the visa was not cancelled under section 67 of the Immigration Act 2009; and
- c. no visa was granted under section 68 of the Immigration Act 2009.

### **D2.15.5 Meaning of granting visa or entry permission as result of administrative error**

*See also Immigration Act 2009 s 8*

A visa is granted as a result of an administrative error if:

- a. it is granted to a New Zealand citizen (unless the person is a New Zealand citizen entering New Zealand in the circumstances described in section 13(4)(b) of the Immigration Act 2009); or
- b. it is granted to an excluded person (unless section 17 of the Immigration Act 2009 applies); or
- c. the person granting it intended to grant a visa of a type other than the one that was actually granted; or
- d. it is granted for a period exceeding the period specified in regulations or immigration instructions for visas of that type (unless the Minister or an immigration officer deliberately and properly granted it as an exception to the immigration instructions); or
- e. it is granted on the basis of the person holding a visa that was granted as a result of an administrative error; or
- f. it is granted in contravention of:
  - i. a special direction; or
  - ii. immigration instructions (unless the Minister or an immigration officer deliberately and properly granted it as an exception to immigration instructions); or
  - iii. an instruction of a kind referred to in section 378(7) of the Immigration Act 2009.

### **D2.15.15 Deportation liability of temporary entry class visa holder for cause**

*See also Immigration Act 2009 s 157*

- a. A temporary entry class visa holder is liable for deportation if the Minister or an immigration officer determines that there is sufficient reason to deport them.
- b. Sufficient reason includes but is not limited to:
  - i. breach of conditions of the person's visa;
  - ii. criminal offending;
  - iii. other matters relating to character;
  - iv. concealing relevant information in relation to the person's application for a visa;
  - v. a situation where the person's circumstances no longer meet the rules or criteria under which the visa was granted.

### **D2.15.20 Making the holder of a temporary entry class visa liable for deportation**

*See also Immigration Act 2009 s 155, 156, 157, 170, 171*

- a. If an immigration officer determines that a person, who holds a temporary entry class visa, is liable for deportation under sections 155, 156, or 157, a deportation liability notice may be served on the person. D2.31 and D2.32 set out the matters that must be included in a deportation liability notice and how it must be served.
- b. Only officers holding the appropriate delegation (see A15.5) have authority to determine that the holder of a temporary visa is liable for deportation.

### **D2.15.25 Deportation liability of residence class visa due to fraud, forgery, etc**

*See also Immigration Act 2009 s 158*

A residence class visa holder is liable for deportation if:

- a. the person is convicted of an offence where it is established that:
  - i. any of the information provided in relation to the person's application, or purported application, for a residence class visa or entry permission was fraudulent, forged, false, or misleading, or any relevant information was concealed; or

- ii. any of the information provided in relation to the person's, or any other person's, application, or purported application, for a visa on the basis of which the residence class visa was granted was fraudulent, forged, false, or misleading, or any relevant information was concealed; or
- b. the Minister determines that:
  - i. any of the information provided in relation to the person's application, or purported application, for a residence class visa or entry permission was fraudulent, forged, false, or misleading, or any relevant information was concealed; or
  - ii. any of the information provided in relation to the person's, or any other person's, application, or purported application, for a visa on the basis of which the residence class visa was granted was fraudulent, forged, false, or misleading, or any relevant information was concealed.
- c. A former citizen who is deemed by section 75 of the Immigration Act 2009 to hold a resident visa is liable for deportation if:
  - i. the person was deprived of his or her citizenship under section 17 of the Citizenship Act 1977 on the grounds that the grant, or grant requirement, was procured by fraud, false representation, or wilful concealment of relevant information; and
  - ii. that fraud, false representation, or wilful concealment of relevant information occurred in the context of procuring the immigration status that enabled the person to meet a requirement, or requirements, for the grant of New Zealand citizenship.

#### **D2.15.30 Deportation liability of resident if visa conditions breached**

*See also Immigration Act 2009 s159*

- a. A resident is liable for deportation if the Minister determines that:
  - i. the conditions of his or her visa have not been met; or
  - ii. the resident has materially breached the conditions of his or her visa.

#### **D2.15.35 Deportation liability of residence class visa holder if new information as to character becomes available**

*See also Immigration Act 2009 s 160*

- a. A residence class visa holder is liable for deportation if, not later than 5 years after the date the person first held a residence class visa:
  - i. new information becomes available that:
    - o relates to the character of the person; and
    - o was relevant at the time the visa was granted; and
  - ii. the Minister determines that the person would not have been eligible for the grant of the visa under the Immigration Act 2009 or immigration instructions if that information had been available at the time the visa was granted.
- b. The new information may relate to whether the person was, or should have been, an excluded person, or to rules and criteria relating to character contained within immigration instructions.
- c. For the purposes of this section, the date that a person first held a residence class visa must be calculated in accordance with section 161(5) of the Immigration Act 2009.

#### **D2.15.40 Deportation liability of residence class visa holder convicted of criminal offence**

*See also Immigration Act 2009 s 161*

A residence class visa holder is liable for deportation if they are convicted, in New Zealand or elsewhere:

- a. of an offence for which the court has the power to impose imprisonment for a term of 3 months or more if the offence was committed at any time:
  - i. when the person was unlawfully in New Zealand; or
  - ii. when the person held a temporary entry class visa; or
  - iii. not later than 2 years after the person first held a residence class visa; or
- b. of an offence for which the court has the power to impose imprisonment for a term of 2 years or more, if the offence was committed not later than 5 years after the person first held a residence class visa; or
- c. of an offence and sentenced to imprisonment for a term of 5 years or more (or for an indeterminate period capable of running for 5 years or more), if the offence was committed not later than 10 years after the person first held a residence class visa; or
- d. of an offence against section 350(1)(a) or 351 of the **Immigration Act 2009**, if the offence was committed not later than 10 years after the person first held a residence class visa, and whether that visa was granted before or after this provision came into force.
- e. A person liable for deportation under this section may, not later than 28 days after being served with a deportation liability notice, appeal to the Tribunal

- i. on humanitarian grounds against his or her liability for deportation; and
- ii. if he or she is a refugee or a protected person, against any decision of a refugee and protection officer that he or she may be deported.
- f. For the purposes of (a)(iii), (b), (c), and (d), the periods of 2 years, 5 years, and 10 years after a person first held a residence class visa are to be determined exclusive of any time spent by the person in imprisonment following conviction for any offence.
- g. D2.15.40(c) applies:
  - i. whether the sentence is of immediate effect or is deferred or is suspended in whole or in part;
  - ii. if a person has been convicted of 2 or more offences on the same occasion or in the same proceedings, and any sentences of imprisonment imposed in respect of those offences are cumulative, as if the person had been convicted of a single offence and sentenced for that offence to the total of the cumulative sentences; or
  - iii. if a person has been convicted of 2 or more offences, and a single sentence has been imposed in respect of those offences, as if that sentence had been imposed in respect of a conviction for a single offence.

#### **D2.15.45 Determining periods from which person first held residence class visa**

- a. For the purposes of D2.15.40(a)-(d), the periods of 2 years, 5 years, and 10 years after a person first held a residence class visa are to be determined exclusive of any time spent by the person in imprisonment following conviction for any offence.
- b. For the purposes of D3.35(c) and D2.15.35, a person first holds a residence class visa:
  - i. on the date on which the person is first granted a residence class visa of any type in New Zealand; or
  - ii. if the visa was granted outside of New Zealand, on the first occasion on which the person arrives in New Zealand and is granted entry permission as the holder of the residence class visa; or
  - iii. if the person arrives in New Zealand and is granted entry permission as the holder of a residence class visa following a continuous period of absence from New Zealand of at least 5 years, on the date the person first re-enters New Zealand after the continuous period of absence; or
  - iv. if the person is a person to whom a visa waiver applies and arrives in New Zealand following a continuous period of absence from New Zealand of at least 5 years, on the date the person first re-enters New Zealand (and is granted a residence class visa) after the continuous period of absence.
- c. If a person was exempt from the requirement to hold a permit under the Immigration Act 1987 but is deemed to hold a residence class visa under section 417(3) of the Immigration Act 2009, for the purposes of this section, the person first holds a residence class visa:
  - i. on the date they first entered New Zealand and were exempt from the requirement to hold a residence permit under the Immigration Act 1987; or
  - ii. on the date they first re-entered New Zealand and were exempt from the requirement to hold a residence permit under the Immigration Act 1987 following a continuous period of absence from New Zealand of at least 5 years.

#### **D2.15.50 Deportation liability if refugee or protection status cancelled under section 146**

*See also Immigration Act 2009 s 162*

A person who is not a New Zealand citizen and who was previously recognised as a refugee or a protected person is liable for deportation if his or her recognition is cancelled under section 146 of the Immigration Act 2009.

#### **D2.15.55 Deportation liability of persons threatening security**

*See also Immigration Act 2009 s 163*

- a. Where the Minister certifies that a person constitutes a threat or risk to security, the Governor-General may, by Order in Council, order the deportation from New Zealand of that person.
- b. The person named in the order is accordingly liable for deportation.
- c. The Governor-General may, by Order in Council, revoke that order.

## **D2.25 Identifying and locating people suspected of being liable for deportation**

### **D2.25.1 Dealing with information on people suspected of being liable for deportation**

Information alleging a person may be in New Zealand unlawfully or that a person may otherwise be liable for deportation can come from a variety of sources. An immigration officer must verify such information to the extent that they are satisfied there is good cause to suspect that a particular person is in New Zealand unlawfully or is otherwise liable for deportation. This may be achieved by establishing a person's identity and immigration status from Immigration New Zealand files or database or other documentation.

### **D2.25.5 Determining whether a person is in New Zealand unlawfully or otherwise liable for deportation**

- a. Once a person suspected of being in New Zealand unlawfully is located it is necessary to confirm both their identity and immigration status.
- b. Once a person is otherwise suspected of being liable for deportation it is necessary to obtain the information required to investigate and determine whether the person is liable for deportation.
- c. The powers set out at D2.25.15 and D2.25.40 can be used to obtain both evidence of identity and immigration status as well as an address in New Zealand and other information which can be used to determine whether or not a person is liable for deportation.

### **D2.25.10 Powers of immigration officers in relation to persons suspected of being liable for deportation**

*See also Immigration Act 2009 ss 274, 275, 276, 277, 278, 280, 281, 287, 288*

- a. There are a range of provisions in the Immigration Act 2009 which assist immigration officers to locate and take action against persons suspected of being in New Zealand unlawfully or who may be otherwise liable for deportation. These powers and their limitations are described in detail in D2.25.15 to D2.25.40. Some of the powers may only be exercised by authorised immigration officers (see [A15.1.20](#)).

- b. Powers in relation to collection of biometric information for compliance purposes are described in [A22](#).

### **D2.25.15 Powers of immigration officers to require production of information from some agencies**

*See also Immigration Act 2009 ss 274, 275*

- a. If an immigration officer has good cause to suspect that:
  - i. a particular person may be, or may become as a result of investigations, liable for deportation; or
  - ii. particular premises are, or have been, occupied (whether for residential purposes or otherwise) by a person who may be, or may become as a result of investigations, liable for deportation;the immigration officer may prepare a certificate in the prescribed form requiring **that** certain government agencies, or other bodies or persons **must produce for inspection and** provide a copy, or **must** allow the officer to copy, any record or other information held that is reasonably available.
- b. The power to require production of such information and records is limited to the government agencies, and other bodies and persons as listed below:
  - i. the following government agencies:
    - o New Zealand Customs Service;
    - o Ministry of Social Development;
    - o Ministry of Justice;
    - o New Zealand Police;
    - o Land Transport New Zealand;
    - o Department of Building and Housing;
    - o Housing New Zealand Corporation;
    - o Department of Corrections;
    - o any government agency established in substitution for, or set up to take over any relevant function of, the departments and agencies listed in (i) above;
  - ii. education providers, in relation only to enrolled students not in compulsory education;
  - iii. postal and courier service providers;
  - iv. telecommunications service providers;
  - v. internet service providers;
  - vi. subscription television service providers;
  - vii. finance and banking service providers;
  - viii. local government and regional government bodies;
  - ix. insurance service providers;
  - x. providers of utilities such as electricity, gas, and water;
  - xi. real estate agents; and
  - xii. in relation to a person whose location is being sought, the person's employer or former employer.

- c. Information obtainable from the sources detailed above is limited to information about an individual which may help to establish:
  - i. in the case of a certificate under (a)(i) above, the present whereabouts of the person named in the certificate, or that person's whereabouts at any time in the past; or
  - ii. in the case of a certificate under (a)(ii) above, the name(s) of the present occupier(s), or name(s) of any occupier(s) of the premises at any time in the past.
- d. If an immigration officer believes the suspected person is using one or more aliases, the immigration officer may include any such alias in any certificate.

#### **D2.25.20 Powers of immigration officers to enter premises to obtain information from accommodation providers**

*See also Immigration Act 2009 s 276*

- a. An immigration officer may exercise the powers in section 276(2) of the Immigration Act 2009 for the purposes of locating any person who is liable for deportation.
- b. Section 276(2) of the Immigration Act 2009 allows immigration officers to enter any part of certain premises of accommodation providers (other than a part of a premises that is a dwelling house) in which the immigration officer reasonably believes any register or list kept by accommodation providers is kept, and:
  - i. require the accommodation provider, or any other person appearing to have that list or register under their control to produce for inspection any part of the register or list; and
  - ii. copy or require a person to provide a copy of any part of the register or list that relates to the person who is liable for deportation if they believe on reasonable grounds that the information contained in the register or list might relate to any person who is liable for deportation.
- c. An immigration officer may enter any of the premises included in (b) above and any part of those premises where the officer believes on reasonable grounds a relevant record is kept. No warrant or authority other than section 276 of the Immigration Act 2009 is required.
- d. Entry may be made at any reasonable time, both day and night, during which the premises are open for business.

#### **D2.25.25 Definition of 'accommodation provider'**

*See also Immigration Act 2009 s 276*

'Accommodation provider' means the operator of any hotel, motel, guesthouse, motor camp, or other premises in which accommodation is offered for valuable consideration to any member of the public.

#### **D2.25.30 Powers of immigration officers to enter premises to obtain information from employers**

*See also Immigration Act 2009 s 277*

- a. An immigration officer may:
  - i. enter any part of an employer's premises in which the officer reasonably believes a wages and time record, or any other document relating to the remuneration or employment conditions of an employee is kept; and
  - ii. require the employer, or person appearing to have control of the record, to produce that document or record for inspection; and
  - iii. copy, or require a person to provide a copy of any part of a record that is required to be produced.
- b. The powers described in (a) above may only be exercised in the following circumstances:
  - i. where the immigration officer believes on reasonable grounds that there is kept on any premises:
    - o any wages and time record kept by an employer in accordance with the provisions of any Act; or
    - o any other document relating to the remuneration or employment conditions of an employee; and
  - ii. There may be information in that record or other document relating to a person who is:
    - o not entitled under the Immigration Act 2009 to work in New Zealand or to undertake work of the relevant type or duration or for the relevant employer; or
    - o otherwise not complying with obligations under the Immigration Act 2009 (including obligations as an employer); or
    - o liable for deportation.

**Note:** Premises includes a dwellinghouse.

- c. The powers described in (a) above may only be exercised for the following purposes:
  - i. determining whether a person is complying with work related conditions of their visa;
  - ii. determining whether an employer is complying with the employer's obligations (which, to avoid doubt, includes the obligation not to commit an offence) under the Immigration Act 2009;
  - iii. locating a person who is liable for deportation;

- iv. determining whether a person who is working for an employer in New Zealand is entitled to work in New Zealand.
- d. Entry may be made at any reasonable time, both day and night, during which the work is being carried out on the premises or premises are open for business.
- e. No warrant or authority other than section 277 of the Immigration Act 2009 is required.

#### **D2.25.31 Powers of entry and search for employees on employers' premises**

*See also Immigration Act 2009 s277A*

- a. In this section:
  - i. premises means any premises, including a dwellinghouse and any ship or other vessel or vehicle
  - ii. specified employee means a person who an immigration officer believes on reasonable grounds is or may be an employee of an employer who the immigration officer has good cause to suspect is committing an offence under section 350 or 351
  - iii. specified person means a person who an immigration officer believes on reasonable grounds is or may be a person who:
    - o is not entitled under this Act to work in New Zealand; or
    - o is not complying with 1 or more work-related conditions of his or her visa.
- b. An immigration officer may, for any purpose listed in section 277(1), exercise any 1 or more of the powers in specified in (c) if the officer believes on reasonable grounds that a specified person or a specified employee is at premises:
  - i. that are owned, occupied, or used by an employer; and
  - ii. at which the officer believes on reasonable grounds that work is being done.
- c. An immigration officer may:
  - i. enter any part of the premises; and
  - ii. search for any specified person or specified employee at the premises; and
  - iii. require any specified person at the premises to answer questions put by the immigration officer in order to ascertain:
    - o whether the person is entitled to work in New Zealand; and
    - o whether the person is complying with the work-related conditions of his or her visa (if any); and
    - o require any specified person at the premises to produce for inspection; and
    - o any documentary or other evidence of the person's identity; and
    - o the person's passport or certificate of identity (whether or not it also relates to any other person); and
  - iv. require anyone at the premises who has access to copying facilities to provide copies of any documents or things provided under (c)(iv); and
  - v. require any specified employee at the premises to answer questions put by the immigration officer in order to ascertain whether the specified employee's employer is complying with the employer's obligations under the Immigration Act 2009.
- d. An immigration officer may retain any original documents or things produced under (c)(iv), and any copies provided under (c)(v), and may check them against any wages and time records, or any other documents relating to the remuneration or employment conditions of any employees, obtained by the officer under section 277(3) of the Immigration Act 2009.
- e. The powers specified in (c) may be exercised at any reasonable time during which work is being carried out at the premises, or they are open for business, whether by day or by night, without a warrant or any other authority than this section.
- f. Any original documents or things produced under this section may be retained and used by an immigration officer until the immigration officer has determined whether the person to whom they relate is liable for deportation or turnaround, and then,—
  - i. if the person is liable for deportation or turnaround, or becomes liable for deportation following the exercise of the immigration officer's powers under this section, the documents or things may be retained and used by the Crown toward effecting the person's deportation or departure from New Zealand; or
  - ii. if the person is not liable for deportation or turnaround, and does not become liable for deportation following the exercise of the immigration officer's powers under this section, the documents or things must be returned to the person as soon as possible.

#### **D2.25.32 Powers of immigration officers to enter premises to obtain information from education providers**

*See also Immigration Act s 278*

- a. An immigration officer may:

- i. enter any part of the education provider's premises in which the officer reasonably believes the information or record described in (b) below is held; and
  - ii. require the education provider or person appearing to have the information or record under that person's control to produce for inspection the information or record; and
  - iii. copy or require a person to provide a copy of any information or record that is required to be produced to the officer.
- b. The powers described in (a) above may only be exercised in circumstances where an immigration officer believes on reasonable grounds that:
- i. any information or record is held on an education provider's premises; and
  - ii. that information or record may relate to a person, excluding any person described in (c) below, who is:
  - iii. not entitled under the Immigration Act 2009 to study in New Zealand, or undertake a programme of study of a particular type or duration or conducted by a particular education provider; or
  - iv. otherwise not complying with obligations under the Immigration Act 2009 (including obligations as an education provider); or
  - v. liable for deportation.
- c. The powers described in (a) above may not be exercised in relation to a person undertaking compulsory education (see section 4 of the Immigration Act 2009) or any member of the family of such a person.
- d. The powers described in (a) above may only be exercised for the following purposes:
- i. determining whether a person is complying with the study-related conditions of his or her visa;
  - ii. determining whether an education provider is complying with the provider's obligations under the Immigration Act 2009;
  - iii. locating a person who is liable for deportation.
- e. Entry may be made at any reasonable time, both day and night, during which the education provider is open for business.
- f. No warrant or authority other than section 278 of the Immigration Act 2009 is required.

#### **D2.25.33 Treatment of identity documents and other things**

*See also Immigration Act s 279A*

- a. In this provision and D2.25.35 and D2.25.40, identity document, in relation to a person, means all or any of the following:
  - i. documentary or other evidence of the person's identity;
  - ii. any passport or certificate of identity relating or purporting to relate to the person, whether or not it also relates to any other person;
  - iii. any passport or certificate of identity relating to a dependent child of the person (but only in circumstances where there is good cause to suspect that the child is liable for deportation or turnaround).
- b. Any identity documents or things surrendered or obtained under D2.25.35 and D2.25.40 may be used by the Crown toward effecting the person's deportation or departure from New Zealand.
- c. To the extent that any identity documents or things surrendered or obtained under D2.25.35 and D2.25.40 are not used or required for the person's deportation or departure from New Zealand, they must be returned to the person:
  - i. on the person's departure from New Zealand or on the person being granted a visa and entry permission; or
  - ii. when the person's liability for deportation is cancelled or suspended, or ceases for any reason.

#### **D2.25.35 Power of immigration officers to request information and documents where liability for deportation or turnaround suspected**

*See also Immigration Act 2009 s 280*

- a. If an immigration officer has good cause to suspect that a person is liable for deportation or turnaround, the officer may, for the purpose of establishing whether that is the case, request the person to do one or more of the following things:
  - i. supply the person's full name (or names, if the person is known by more than 1 name), date of birth, country of birth, nationality, and residential address;
  - ii. produce any identity documents for inspection;
  - iii. surrender any identity document produced under (ii);
  - iv. if the person does not currently have in his or her possession an identity document requested by the officer, give details to the officer of where it can be found or who is holding it.
- b. Before acting under (a) above the immigration officer must first:
  - i. inform the person that he or she suspects that the person is liable for deportation or turnaround; and

- ii. warn the person that if the person fails without reasonable excuse to comply with his or her request, the person is liable to arrest and detention under the Immigration Act 2009.

#### **D2.25.40 Powers to require information from person liable for deportation or turnaround**

*See also Immigration Act 2009 s 281*

Where a person is liable for deportation or turnaround an immigration officer may require the person to:

- a. do any of the things referred to in D2.25.35; and
- b. produce and surrender any travel tickets, or cash or security in lieu of travel tickets, held by the person

#### **D2.25.41 Obligation of third parties to surrender identity documents**

*See also Immigration Act 2009 s 281A*

- a. A person (person A) must surrender an identity document relating to another person (person B) to an immigration officer if:
  - i. person B:
    - has failed to produce or surrender the identity document when required to do so under D2.25.35 or D2.25.40; or
    - has told an immigration officer where the identity document may be found or who is holding it; and
  - ii. the immigration officer has good cause to suspect that person A is in possession of the identity document; and
  - iii. the immigration officer gives person A a certificate in the prescribed form that requires person A to surrender the identity document.
- b. No action lies against person A in any court if, pursuant to a requirement or purported requirement under this section by an immigration officer, person A surrenders an identity document relating to person B to the immigration officer.

#### **D2.25.42 Power of entry and search for identity documents**

*See also Immigration Act 2009 s 281B*

- a. An authorised immigration officer may, in order to facilitate the deportation or turnaround of a person, exercise the powers in (b) if:
  - i. the person is liable for deportation or turnaround; and
  - ii. the person has refused a requirement under section 281 to produce or surrender an identity document required under that section; and
  - iii. the immigration officer has reasonable grounds to believe that the identity document is at the place to be entered and searched; and
  - iv. the place proposed to be entered and searched is:
    - the place (which may include a vehicle) where the person is currently located; or
    - the person's abode; or
    - any premises or vehicle owned by, or under the control of, the person.
- b. An immigration officer may at any reasonable time, without a warrant or any other authority than this section, do either or both of the following:
  - i. enter and search a place referred to in (a)(iv);
  - ii. seize any identity document that a person has been required to produce or surrender and that is found at the place.

#### **D2.25.43 Powers of entry and search relating to deportation**

*See also Immigration Act 2009 s 286*

For the purpose of serving any deportation liability notice, deportation order, or removal order, or executing a deportation order or removal order, an immigration officer authorised under section 388(2) of the Immigration Act 2009 may, without further authority than section 286 of the Immigration Act 2009, and by force if necessary:

- a. enter and search at any reasonable time by day or night (see D2.30.10(d) and (e) and D2.40.1(d) and (e)) any building or premises in which the officer believes on reasonable grounds that the person named in the notice or order is present; and
- b. serve the notice or order, or execute the deportation order or removal order.

#### **D2.25.45 Constables' powers**

*See also Immigration Act 2009 ss 286, 293*

A constable has the same powers of entry and inspection as immigration officers, as set out in D2.25.20 to D2.25.42.

#### **D2.25.50 Power of arrest - constables**

*See also Immigration Act 2009 ss 114, 115, 309, 310, 313, 327, 329*

- a. The Immigration Act 2009 has a number of provisions which give constables powers of arrest.
- b. When arresting and detaining any person without warrant under section 313 of the Immigration Act 2009, the constable has a duty to:
  - i. inform the person at the time of arrest, unless in all the circumstances it is impracticable to do so, of the reason for the arrest and the fact that the arrest does not relate to a criminal matter; and
  - ii. if not in uniform, produce evidence that they are a constable; and
  - iii. inform the person that they may contact a lawyer, or (if appropriate), a responsible adult; and
  - iv. inform the person of the maximum duration of the detention.
- c. A constable arresting any person under the Immigration Act 2009 may call on any person nearby for assistance. That may include an immigration officer, who is then justified in assisting.

#### **D2.25.55 Requirement on officers to identify themselves**

*See also Immigration Act 2009 s 465*

- a. Immigration officers, Customs officers and constables are all required to identify themselves when exercising the powers of an immigration officer under the Immigration Act 2009.
- b. Suitable evidence of identity is as follows:
  - i. for immigration officers, the officer's warrant of designation.
  - ii. for Customs officers, evidence of the officer's appointment as a Customs officer.
  - iii. for constables, being in uniform is sufficient, otherwise the officer's badge or other evidence of being a member of the Police.
- c. If an officer is seeking entry to any premises, building or craft in the course of their duties under the Immigration Act 2009, the officer must, if called upon to do so, state the provision or provisions of the Immigration Act 2009 which entitle them to entry.

## **D2.30 Period of deportation liability**

*See also Immigration Act 2009 s 167*

- a. Residence class visa holders remain liable for deportation for a period of 10 years following the arising of the liability for deportation.
- b. The period of 10 years in subsection (a) above must be calculated exclusive of:
  - i. any time spent by the person in imprisonment following conviction for any offence;
  - ii. any period of time when the person's liability for deportation is suspended by the Minister under section 172 of the Immigration Act 2009 or by the Tribunal under section 212 of the Immigration Act 2009.
- c. A person liable for deportation under section 154 of the Immigration Act 2009 (being a person unlawfully in New Zealand) remains liable for deportation as long as he or she is unlawfully in New Zealand.

### **D2.30.1 Liability for deportation when person outside New Zealand**

*See also Immigration Act 2009 s 168*

- a. A person may become liable for deportation under any of sections 155 to 163 of the Immigration Act 2009 when the person is outside New Zealand and, subject to section 168 of the Immigration Act 2009, Part 6 and Part 7 of the Immigration Act 2009 apply as if the person were in New Zealand.
- b. Subsection (c) below applies to a person who:
  - i. is outside New Zealand; and
  - ii. is liable for deportation; and
  - iii. holds a visa.
- c. The person may:
  - i. appeal to the Immigration and Protection Tribunal against his or her liability for deportation; and
  - ii. travel to New Zealand during the period in which the appeal can be made; and
  - iii. if the person does appeal, travel to New Zealand pending the determination of the appeal.

### **D2.30.5 Effect of being liable for deportation**

*See also Immigration Act 2009 s 169*

- a. A person liable for deportation may not:
  - i. apply for a visa, if he or she is unlawfully in New Zealand; or
  - ii. apply for a further visa of a different class or type, if he or she currently holds a visa.
- b. However, the Minister of Immigration or an immigration officer may, in his or her absolute discretion, grant a visa of a different class or type to a person to whom section 169 (1)(b) of the Immigration Act 2009 applies.
- c. While a person is liable for deportation, the processing of any application by the person for a visa of a different class or type must be suspended.
- d. Nothing in (c) prevents the processing of any application referred back to the Minister or the Chief Executive by the Tribunal under section 188(1)(d) or (e) of the Immigration Act 2009.
- e. While a person is liable for deportation, the processing of any application by the person for the grant of New Zealand citizenship under section 8 of the Citizenship Act 1977 or section 7(1)(b)(ii) of the Citizenship (Western Samoa) Act 1982 must be suspended.

## **D2.31 Deportation liability notice**

*See also Immigration Act 2009 ss 170, 286*

- a. A deportation liability notice must be served on a person liable for deportation if it is intended to execute the deportation of the person.
- b. (a) above applies unless:
  - i. the person is liable for deportation on the grounds of being unlawfully in New Zealand; or
  - ii. the person is named in a deportation order under section 163 of the Immigration Act 2009.
- c. If a deportation liability notice is served by way of personal service, it may be served only by an immigration officer or by another person on behalf of an immigration officer.
- d. For the purpose of serving any deportation liability notice, an immigration officer may, without further authority than section 286 of the Immigration Act 2009, and by force if necessary,
  - i. enter and search at any reasonable time by day or night any building or premises in which the officer believes on reasonable grounds that the person named in the notice is present; and
  - ii. serve the notice .

## **D2.35 Cancellation or suspension of deportation liability**

### **D2.35.1 Minister may cancel or suspend liability for deportation**

*See also Immigration Act 2009 s 172*

- a. The Minister of Immigration (the Minister) may at any time, by written notice, cancel a person's liability for deportation.
- b. The Minister may at any time, by written notice, suspend a residence class visa holder's liability for deportation:
  - i. for a period not exceeding 5 years; and
  - ii. subject to the visa holder complying with any conditions stated in the notice (which take effect from the date specified in the notice, being a date not earlier than the date of notification).
- c. The Minister may exercise his or her powers under this section whether or not the person who is liable for deportation:
  - i. has given good reason under section 155(2), 156(2)(b), or 157(2) why the person should not be deported; or
  - ii. has purported to apply to the Minister for any other reason.
- d. Where a person fails to comply with the conditions stated in a notice under (b) above:
  - i. the Minister may reactivate the person's liability for deportation by causing a deportation liability notice to be served on the person that sets out the grounds of the reactivation; and
  - ii. subject to section 175A(4) of the Immigration Act 2009, the person has 28 days from the date the deportation liability notice is served to leave New Zealand.
- e. In the case of a person who has appealed against his or her liability for deportation, the Minister must notify the Immigration and Protection Tribunal if the person's liability for deportation is cancelled, suspended, or reactivated under (a), (b), or (c)(i) above.
- f. The decision to cancel or suspend a person's liability for deportation is in the absolute discretion of the Minister.
- g. In the case of a person in imprisonment, the period referred to in (b) above commences on the date of the person's release.
- h. The cancellation or suspension of a person's liability for deportation does not prevent the person from becoming liable for deportation on other grounds.

### **D2.35.5 Right of victims to make submissions on suspension or cancellation of liability for deportation**

*See also Immigration Act 2009 s 173*

- a. In determining whether to cancel or suspend a person's liability for deportation, the Minister must have regard to any written submissions made by a victim of an offence or offences of which the person who is liable for deportation has been convicted and from which his or her liability for deportation arises.
- b. The Minister must, on a request for the purpose, make available to a lawyer or agent (if any) who is acting for the person who is liable for deportation a copy of all written submissions made by the victim.
- c. The Minister, or a lawyer or agent acting for the person, must, on a request for the purpose, show the person a copy of all written submissions made by the victim. However, the person may not keep a copy of any of those submissions.
- d. Despite (b) and (c) above, the Minister may withhold from the person and every lawyer or agent (if any) acting for the person any part of the victim's written submissions if, in the Minister's opinion, the withholding of that part is necessary to protect the physical safety or security of the victim concerned.
- e. Despite (a) above, the Minister must not have regard to any part of the victim's submissions that is withheld under (d) above.
- f. In this section, victim means a victim of an offence of a kind referred to in section 29 of the Victims' Rights Act 2002.

### **D2.35.10 Effect of suspension**

*See also Immigration Act 2009 s 174*

- a. Where a person's liability for deportation is suspended by the Minister under section 172 of the Immigration Act 2009, during the period of the suspension:
  - i. the person may not apply for a visa of a different class or type; and
  - ii. the processing of any application made by the person for a visa of a different class or type must be suspended; and
  - iii. subject to sections 9 and 10 of the Citizenship Act 1977 and section 7(1)(b)(i) of the Citizenship (Western Samoa) Act 1982, the person may not be granted citizenship on the basis of meeting a

requirement (or requirements) for the grant of New Zealand citizenship that requires the person to hold a residence class visa.

- b. If the Minister determines that a person has met the conditions stated by the Minister under section 172(2) of the Immigration Act 2009 for the period of the suspension, the Minister must:
  - i. cancel the person's liability for deportation; and
  - ii. notify the person and the Tribunal of that fact.

## D2.40 Deportation

### D2.40.1 Service of a deportation order

*See also Immigration Act 2009 s 175*

- a. A deportation order may be served on a person who is liable for deportation on or after the date or time specified in section 175A of the Immigration Act 2009.
- b. However, a deportation order may be served on an earlier date, if requested by the person liable for deportation.
- c. A deportation order may only be served by an immigration officer (or by another person on behalf of an immigration officer) or a constable.
- d. A deportation order may only be served on a person outside New Zealand if the person still holds a visa.

### D2.40.3 Time when deportation order may be served

*See also Immigration Act 2009 s 175A*

- a. Where a person has a right to give good reason why deportation should not proceed, the first day on which a deportation order may be served on the person is:
  - i. if the person does not provide submissions as to good reason why deportation should not proceed, the day that is 15 days after the date of service of a deportation liability notice on the person; or
  - ii. if the person provides submissions as to good reason why deportation should not proceed, and the person to whom the submissions are provided determines that deportation should continue, the day after the person is notified of that determination.
- b. Where a person has a right to appeal under this Act against liability for deportation, the first day on which a deportation order may be served on the person is:
  - i. the day after the expiry of the period for lodging an appeal, if the person has not lodged an appeal;
  - ii. where the person has lodged an appeal to the Tribunal:
    - o if the appeal is withdrawn, the day after the withdrawal;
    - o if the liability for deportation is upheld, the day that is 28 days after the Tribunal determines the appeal (but subject to (c));
- c. where the person has applied under section 245 of the Immigration Act 2009 for leave to appeal to the High Court:
  - i. if the application for leave is withdrawn, the day after the withdrawal;
  - ii. if the High Court refuses leave to appeal, on the day after the expiry of the period for lodging an application for leave to the Court of Appeal in accordance with the rules of the Court of Appeal (but subject to subparagraph (iii));
  - iii. if the person applies to the Court of Appeal for leave and leave is refused, the day after the person is notified of the Court of Appeal's refusal;
  - iv. if the application for leave is granted but the appeal is withdrawn, the day after the withdrawal;
  - v. if the application for leave is granted and the person's liability for deportation is upheld, the day after the person is notified of the determination of the appeal.
- d. Where a person has both a right to give good reason why deportation should not proceed and a right to appeal under this Act against liability for deportation, the first day on which a deportation order may be served on the person is the later of:
  - i. the first day on which the deportation order may be served under (a); and
  - ii. the first day on which a deportation order may be served under (b).
- e. Where a person has breached the conditions stated in a notice or order suspending his or her liability for deportation under section 172(2) or 212(1) of the Immigration Act 2009, the first day on which a deportation order may be served on the person is the later of:
  - i. the day that is 28 days after service of a deportation liability notice on the person under section 172(3) or 212(3)(a) of the Immigration Act 2009, as the case may be; and
  - ii. any applicable day determined under (b).
- f. A deportation order may be served immediately on a person in the following circumstances:
  - i. where the person has been served with a deportation liability notice and the person does not have:
    - o a right to give good reason why deportation should not proceed; or
    - o a right of appeal against liability for deportation;
  - ii. where an Order in Council under section 163 of the Immigration Act 2009 has been made in respect of the person:
    - o was unlawfully in New Zealand before 2 am on 29 November 2010; and
    - o continues to be unlawfully in New Zealand under this Act; and

- o has no right of appeal under this Act against liability for deportation;
  - iii. where the person was the holder of a limited visa that has expired (unless that person has been served with a deportation liability notice under (i), in which case (i) applies);
- g. In this section, a right to give good reason why deportation should not proceed means a right, stated in a deportation liability notice served on a person liable for deportation, to give good reason, not later than 14 days after the date of service of that notice, as to why deportation should not proceed.

#### **D2.40.5 Content of deportation order**

*See also Immigration Act 2009 s 176*

- a. A deportation order must specify:
  - i. that the person named in the order is ordered to be deported from New Zealand; and
  - ii. that any visa held by the person has been, or will be, cancelled in accordance with section 64(1) (ab) of the Immigration Act 2009; and
  - iii. the provision of the Immigration Act 2009 under which the person became liable for deportation; and
  - iv. the ground or grounds for deportation; and
  - v. the period of any prohibition on entry to New Zealand that the person named in the order is subject to; and
  - vi. the consequences of attempting to return to New Zealand during the period of prohibition; and
  - vii. that the person is required to repay the actual or (if an estimate of costs is specified in the deportation order) the estimated costs of deportation.
- b. A deportation order must be signed by:
  - i. the Governor-General, if the order is made under section 163 of the Immigration Act 2009; or
  - ii. an immigration officer, in any other case.

#### **D2.40.10 Deportation order may be cancelled**

*See also Immigration Act 2009 s 177*

- a. An immigration officer may, in his or her absolute discretion, cancel a deportation order served on a person to whom section 154 of the Immigration Act 2009 applies.
- b. Nothing in (a) above gives a person a right to apply for the cancellation of a deportation order. However, an immigration officer must consider cancelling the deportation order of a person who is in New Zealand if the person provides information to the officer concerning his or her personal circumstances, and the information is relevant to New Zealand's international obligations.
- c. If an immigration officer does consider cancelling a deportation order, whether by way of a purported application or his or her own motion, the officer must have regard to any relevant international obligations, but otherwise:
  - i. may make a decision as he or she thinks fit; and
  - ii. in doing so, is not under any obligation, whether by implication or otherwise:
    - o to apply any test or any particular test and, in particular, the officer is not obliged to apply the test set out in section 207 of the Immigration Act 2009; or
    - o to inquire into the circumstances of, or to make any further inquiry in respect of the information provided by or in respect of, the person who is the subject of the deportation order or any other person.
- d. Whether or not an immigration officer considers cancelling a deportation order:
  - i. he or she is not obliged to give reasons for any decision, other than the reason that this subsection applies; and
  - ii. privacy principle 6 (which relates to access to personal information and is set out in section 6 of the Privacy Act 1993) does not apply to any reasons for any decision relating to the purported application; and
  - iii. section 23 of the Official Information Act 1982 does not apply in respect of the decision.
- e. However, to the extent that an immigration officer does have regard to any international obligations, the officer is obliged to record:
  - i. a description of the international obligations; and
  - ii. the facts about the person's personal circumstances.

#### **D2.40.15 Executing deportation order**

*See also Immigration Act 2009 s 178*

- a. A deportation order may be executed once it has been served on the person subject to the order.
- b. A deportation order may be executed by:

- i. taking the person into custody; and
  - ii. escorting the person (or arranging for the person to be escorted) to an airport or port; and
  - iii. ensuring that the person is placed on board a craft and detained there until the person leaves New Zealand.
- c. A deportation order may be executed in respect of a person who is serving a sentence of imprisonment in a prison only if the Minister of Immigration has ordered the release of the person in accordance with section 55 of the Parole Act 2002.

#### **D2.40.17 Special powers pending deportation or turnaround**

*See also Immigration Act 2009 ss 287, 288*

Where any person is liable for deportation or turnaround, an immigration officer has such of the following powers as are necessary to meet the entry or transit requirements of any country to which or through which the person is to travel:

- a. the power to photograph and measure the person;
- b. the power to take the person's fingerprints, palm-prints, or footprints, or a scan of the person's irises.

#### **D2.40.20 Meaning of deported**

*See also Immigration Act 2009 ss 10, 179*

A person is deported from New Zealand if:

- a. the person leaves New Zealand (whether or not at the expense of the Government of New Zealand):
  - i. on or after the date on which a deportation order may be served on the person under section 175A of the Immigration Act 2009; or
  - ii. after a deportation order has been served on the person; or
  - iii. while he or she is subject to a prohibition on entry to New Zealand under section 179 or 180 of the Immigration Act 2009; or
- b. the person is served with a deportation order when he or she is outside New Zealand; or
- c. the person was deported from New Zealand under the Immigration Act 1987.

**Note:** A person who is deported under (a)(i) above but leaves voluntarily and at their own expense, may not be subject to a period of prohibition on entry in some cases (see D2.45(b)). The person's ability to return to New Zealand is also affected by section 15 and 16 of the Immigration Act 2009.

## D2.45 Prohibition on entry

*See also Immigration Act 2009 s 179*

- a. A person 18 years of age or over who is deported from New Zealand may not return to New Zealand, or be granted a visa or entry permission, during the period of prohibition on entry that applies to the person as set out in the following table:

Why person deported	Period of prohibition on entry (from date of deportation)
Section 155 of the Immigration Act 2009 applies (granted a visa as the result of an administrative error and visa not cancelled)	none
Section 154 of the Immigration Act 2009 applies (unlawfully in New Zealand), and person is subject to deportation order and deported not more than 12 months after date on which person became unlawfully in New Zealand	2 years
Section 154 of the Immigration Act 2009 applies (unlawfully in New Zealand), and person is subject to deportation order and deported 12 months or more after date on which person became unlawfully in New Zealand	5 years
Section 154 of the Immigration Act 2009 applies (unlawfully in New Zealand), and person is subject to deportation order, and it is second or subsequent time that person has been unlawfully in New Zealand	5 years
Section 157 of the Immigration Act 2009 applies (sufficient reasons for temporary entry class visa holder to be deported)	5 years
Section 159 of the Immigration Act 2009 applies (breached resident visa conditions)	5 years
Section 156 of the Immigration Act 2009 applies (visa granted on basis of false identity)	Permanent prohibition
Section 158 of the Immigration Act 2009 applies (fraud, forgery, etc in relation to an application)	Permanent prohibition
Section 160 of the Immigration Act 2009 applies (new information as to character becomes available)	Permanent prohibition
Section 162 of the Immigration Act 2009 applies (refugee or protection status cancelled for fraud, forgery, etc)	Permanent prohibition
Section 161 of the Immigration Act 2009 applies (residence class visa holder convicted of specified offence)	Permanent prohibition
Section 163 of the Immigration Act 2009 applies (certified as person constituting threat or risk to security)	Permanent prohibition

- b. A person who is liable for deportation is not subject to any period of prohibition on entry if the person—
- i. is liable for deportation only on the grounds that the person is unlawfully in New Zealand; and
  - ii. leaves New Zealand voluntarily before he or she is served with a deportation order.
- c. For the purposes of (b), the relevant provision for determining why the person was deported is:
- i. the provision under which the person became liable for deportation, as stated in the last deportation order served on the person; or
  - ii. if no deportation order was served on the person, the provision under which liability for deportation arose, as stated in the last deportation liability notice served on the person.

**D2.45.1 Consequence of attempt to enter New Zealand during period of prohibition on entry**

*See also Immigration Act 2009 s 181*

If a person to whom a period of prohibition on entry applies attempts to enter New Zealand, the period will restart from the later of:

- a. the date the person attempts to re-enter if the entry is unsuccessful; or
- b. the date the person is once again deported from New Zealand if the re-entry is successful.

#### **D4.16 Arresting or detaining officer may seek assistance**

*See also Immigration Act 2009 s 329*

- a. Where a constable is arresting any person under the Immigration Act 2009, the constable may call upon any person in the vicinity for assistance.
- b. Where an immigration officer is detaining any person under section 312 of the Immigration Act 2009, the officer may call upon any person in the vicinity for assistance.
- c. Every person so called upon is justified (as defined in section 2(1) of the Crimes Act 1961) in assisting, and he or she has all the protection and privileges of an immigration officer when giving his or her assistance, unless that person knows that there is no reasonable ground for the arrest or detention.

## **D4.20 Turnaround of persons arriving at the border**

*See also Immigration Act 2009 s 115*

### **D4.20.1 Who is liable for turnaround?**

A person arriving in New Zealand from another country may be subject to turnaround under Part 9 of the Immigration Act 2009 if:

- a. they are a person to whom a visa waiver applies and who fails to apply for a visa and entry permission or is refused a visa; or
- b. they are not a person to whom a visa waiver applies and not the holder of a visa granted under the Immigration Act 2009; or
- c. they hold a visa but:
  - i. the visa is subsequently cancelled:
    - o on the refusal or revocation of entry permission; or
    - o because they left an immigration control area without presenting to an immigration officer or did not comply with the instruction to remain in the area; or
    - o because they arrived in New Zealand other than at an immigration control area but failed to present themselves within 72 hours at an immigration control area; or
  - ii. the visa is cancelled for administrative error while the person is in an immigration control area (unless some other visa is granted to the person or the person is a New Zealand citizen); or
- d. they are a stowaway (see [Y4.20](#)); or
- e. after arriving in New Zealand, their transit visa is cancelled by an immigration officer; or
- f. they are a transit passenger who holds a transit visa or is a person to whom a transit visa waiver applies, and the transit period concerned has expired, and the transit period concerned has expired.

### **D4.20.5 Consequences of being liable for turnaround**

A person to whom D4.20.1 applies:

- a. is deemed to be unlawfully in New Zealand; and
- b. does not have any rights of appeal on humanitarian grounds; and
- c. is liable to be arrested and detained under Part 9 of the Immigration Act 2009.

#### **D4.35 When turnaround ceases to apply to person remanded in custody or imprisoned**

*See also Immigration Act 2009 s 117*

- a. A person who is liable for turnaround and remanded in custody for suspected criminal offending, or imprisoned in a prison for criminal offending remains liable for turnaround until the expiry of 72 hours after the person is released from custody or imprisonment.
- b. A person who is liable for turnaround and arrested and detained within 72 hours after he or she has been released from custody or imprisonment for suspected criminal offending or criminal offending remains liable for turnaround until the earlier of the following:
  - i. the person is granted a visa and entry permission; or
  - ii. the expiry of a warrant of commitment issued under section 317 or 318 of the Immigration Act 2009, unless a further warrant of commitment is issued or the person is released on conditions under Part 9 of the Immigration Act 2009 or agrees to residence and reporting requirements under section 315 of the Immigration Act 2009 (see [D5.1](#)).
  - iii. in the case of a person detained under a mass arrival warrant issued under section 317B of the Immigration Act 2009, the expiry of the mass arrival warrant, unless a further warrant of commitment is issued under sections 317, 317E, 318, or 323 of the Immigration Act 2009 or the person is released on conditions under Part 9 of the Immigration Act 2009, or agrees to residence and reporting requirements under section 315 of the Immigration Act 2009.

## **D5.10 Decision on application for warrant of commitment**

*See also Immigration Act 2009 s 317*

- a. On an application for a warrant of commitment under section 317 of the Immigration Act 2009, a District Court Judge:
  - i. must, if satisfied on the balance of probabilities that the person is not the person named in the application for the warrant of commitment, order that the person be released from custody immediately; and
  - ii. may in any other case, either:
    - o issue a warrant of commitment in the prescribed form authorising the person's detention, in a place named in the warrant, for a period of up to 28 days; or
    - o order the person's release from custody on conditions under section 320 of the Immigration Act 2009, if not satisfied that detention is warranted.
- b. Unless there are exceptional circumstances, the Judge must not release the person on conditions if:
  - i. the identity of the person is unknown; or
  - ii. the person's identity has not been established to the satisfaction of the court; or
  - iii. a direct or indirect reason for the person being unable to leave New Zealand is, or was, some action or inaction by the person occurring after the person was:
    - o served with a deportation liability notice; or
    - o arrested and detained for the purpose of deportation or turnaround; or
  - iv. the person claimed refugee or protection status only after the person was:
    - o served with a deportation liability notice **or deportation order or with a removal order under the former Immigration Act 1987**; or
    - o arrested and detained for the purposes of deportation or turnaround.

## **D5.55 Form of custody of persons detained without warrant overnight**

*See also Immigration Act 2009 s 331*

Every person who is placed in custody under section 313 of the Immigration Act 2009 (see [D4.15](#)) and is to be detained overnight must be detained:

- a. in the case of a person under 18 years of age **who is not married or in a civil union**, in:
  - i. a residence (within the meaning of section 2(1) of the Children, Young Persons, and Their Families Act 1989) or other premises under the control of, or approved by, the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989; or
  - ii. any other premises agreed to by an immigration officer and the person's parent, guardian, or responsible adult; or
- b. in any other case, in:
  - i. premises approved by the Chief Executive under section 330 of the Immigration Act 2009; or
  - ii. a police station.

## **D5.60 Form of custody of persons detained under warrant of commitment**

*See also Immigration Act 2009 s 332*

Every person who is to be detained in custody (see [D4.15](#)) under a warrant of commitment must be detained:

- a. in the case of a person under 18 years of age **who is not married or in a civil union**, in a place approved for the purpose by the District Court Judge before whom the person is brought, being:
  - i. a residence (within the meaning of section 2(1) of the Children, Young Persons, and Their Families Act 1989) or other premises under the control of, or approved by, the chief executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989; or
  - ii. if the person is not married or in a civil union, any other premises agreed to by an immigration officer and the person's parent, guardian, or responsible adult; or
  - iii. premises approved by the Chief Executive under section 330 of the Immigration Act 2009; or
- b. in any other case:
  - i. in a prison; or
  - ii. in other premises approved for the purpose by the Judge, being premises approved by the chief executive under section 330 of the Immigration Act 2009.

## **D7.10 Obstruction or failing to meet requirements**

*See also Immigration Act 2009 s 344*

- a. Section 344 of the Immigration Act 2009 makes it an offence to obstruct an immigration officer or a constable when they are exercising powers under the Immigration Act 2009 or to fail to meet requirements under the Immigration Act 2009. Such matters may be:
  - i. to without reasonable excuse, refuse or fail to produce or surrender any document, or to supply any information, when required to do so by an immigration officer or a refugee and protection officer; or
  - ii. to fail to remain in an immigration control area or other prescribed place when required to do so, or follow an immigration officer's instructions while in an immigration control area or other prescribed place when required to do so; or
  - iii. refuse or fail to provide biometric information where required under the Immigration Act 2009 to do so, including in accordance with a compulsion order.
- b. Section 279 of the Immigration Act 2009 gives immigration officers authority to require information and documents to be provided where an offence is suspected. After being warned in accordance with section 279 of the Immigration Act 2009, it is an offence under section 344 of the Immigration Act 2009 to refuse or fail without reasonable excuse to comply with any requirement of an immigration officer under that section.

## **D7.35 Offences relating to carriers or a person in charge of a craft**

*See also Immigration Act s 349*

- a. Every carrier or person in charge of a commercial craft commits an offence who:
  - i. fails without reasonable excuse to comply with any of the carrier's or the person's responsibilities under section 96(2) of the Immigration Act 2009; or
  - ii. allows a person to travel to New Zealand before a decision has been made by the Chief Executive under section 97(1) of the Immigration Act 2009; or
  - iii. having been notified under section 97(2) of the Immigration Act 2009 of a decision made by the Chief Executive under section 97(1)(b) or (c) of the Immigration Act 2009, without reasonable excuse fails to ensure that the person to whom the decision relates complies with it; or
  - iv. fails without reasonable excuse to comply with any of the carrier's or the person's obligations under section 102(2), (4), or (5) of the Immigration Act 2009.
- b. Every carrier, or person in charge, of a craft commits an offence who fails without reasonable excuse to comply with any of the requirements of:
  - i. section 101(1)(a) of the Immigration Act 2009; or
  - ii. section 118(1)(a) of the Immigration Act 2009; or
  - iii. sections 101(1)(b), (c), and (d), 101(2), and 118(1)(b) and (c) of the Immigration Act 2009.
- c. Every person in charge of a craft commits an offence who fails without reasonable excuse to comply with section 101(3) of the Immigration Act 2009.
- d. Every carrier of a craft commits an offence who fails to comply with section 118(2) of the Immigration Act 2009.
- e. To avoid doubt, proceedings in respect of an offence against subsection (a), (b), or (c) above may be taken:
  - i. against the carrier, or the person in charge, of the craft, but not both; and
  - ii. whether the offence occurred in or outside New Zealand.

### **D7.35.1 Penalties relating to carriers or a person in charge of a craft**

*See also Immigration Act ss 349, 356*

*See also Immigration (Carriers' Infringement Offences, Fees and Forms) Regulations 2012*

- a. A person convicted of an offence against section 349 of the Immigration Act 2009 is liable to penalties.
- b. A person convicted of an offence against section 349 except section 349 (2)(b) of the Immigration Act 2009 is liable:
  - i. in the case of a carrier of a craft, to imprisonment for a term not exceeding three months, a fine not exceeding \$50,000, or both;
  - ii. in the case of a person in charge, to imprisonment for a term not exceeding three months, a fine not exceeding \$25,000, or both.
- c. A person convicted of an offence against section 349(2)(b) of the Immigration Act 2009 is liable:
  - i. in the case of a carrier of a craft, to imprisonment for a term not exceeding three months or to a fine not exceeding \$20,000;
  - ii. in the case of a carrier of a person in charge of a craft, to imprisonment for a term not exceeding three months or to a fine not exceeding \$10,000.

### **D7.35.5 Infringement offences**

*See also Immigration Act ss 349, 359*

*See also Immigration (Carriers' Infringement Offences, Fees and Forms) Regulations 2012*

An offence under sections 349(1) or 349(2)(a) of the Immigration Act 2009 is an infringement offence.

### **D7.35.10 Proceedings for infringement offences**

*See also Immigration Act ss 360, 362*

*See also Immigration (Carriers' Infringement Offences, Fees and Forms) Regulations 2012*

If a person who is a carrier, or a person in charge, of any craft is alleged to have committed an infringement offence, that person may be either:

- a. proceeded against under the Summary Proceedings Act 1957; or
- b. served with an infringement notice under section 362 of the Immigration Act 2009.

### **D7.35.15 What information may be required by immigration officer**

*See also Immigration Act s 361*

*See also Immigration (Carriers' Infringement Offences, Fees and Forms) Regulations 2012*

When considering whether to issue an infringement notice, an immigration officer may require the person concerned to provide all or any of the following information:

- a. the full name, date of birth, full residential address and, if different, full postal address of the person in charge of the craft;
- b. the legal name and the full postal address of the carrier of the craft.

#### **D7.35.20 Infringement notices**

*See also Immigration Act s 362*

*See also Immigration (Carriers' Infringement Offences, Fees and Forms) Regulations 2012*

- a. If an immigration officer believes on reasonable grounds that a carrier, or a person in charge, of a craft has committed an infringement offence, the immigration officer may issue an infringement notice to the carrier, or the person in charge, of the craft.
- b. Every infringement notice must be in the form prescribed in the Immigration (Carriers' Infringement Offences, Fees and Forms) Regulations 2012.

#### **D7.35.25 How infringement notice may be served**

*See also Immigration Act s 362*

*See also Immigration (Carriers' Infringement Offences, Fees and Forms) Regulations 2012*

- a. An infringement notice may be served by:
  - i. personal delivery to the carrier, or person in charge, of the craft who appears to have committed the infringement offence; or
  - ii. sending it by post to the last known place of residence, or business of the carrier, or person in charge, of the craft.
- b. For the purposes of the Summary Proceedings Act 1957, an infringement notice sent by post is deemed to have been served on the carrier, or the person in charge, of the craft on the date it was posted.
- c. If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case, the provisions of that section apply with all necessary modifications.

#### **D7.35.30 Reminder notices**

*See also Immigration Act s 363*

*See also Immigration (Carriers' Infringement Offences, Fees and Forms) Regulations 2012*

A reminder notice must be in the form prescribed in the Immigration (Carriers' Infringement Offences, Fees and Forms) Regulations 2012.

#### **D7.35.35 Infringement fees**

*See also Immigration Act s 364*

*See also Immigration (Carriers' Infringement Offences, Fees and Forms) Regulations 2012*

- a. Infringement fees prescribed under the Immigration (Carriers' Infringement Offences, Fees and Forms) Regulations 2012 are as the follows:

<b>Provision of the Immigration Act 2009 (the Act)</b>	<b>Description of offence</b>	<b>Nature of offence</b>	<b>Fee for owner, charterer or agent (\$)</b>	<b>Fee for person in charge of the craft (\$)</b>
349(1)(a)	Failing without reasonable excuse to comply with any of the carrier's or the person's responsibilities under section 96(2) of the Act.	Failure to comply with the obligation to provide Advance Passenger Processing data.	1,000	500
349(1)(b)	Allowing a person to travel to New Zealand before a decision has been made by the chief executive under section 97(1) of the Act.	Failure to wait for an Advance Passenger Processing directive.	1,000	500
349(1)(c)	Having been notified under section 97(2) of a decision made by the chief executive under section 97(1)(b), failing without reasonable excuse to ensure that the person to whom the decision relates complies with it.	Failure to comply with a directive not to allow a passenger to board.	5,000	2,500
349(1)(c)	Having been notified under section 97(2) of a decision made by the chief executive under section 97(1)(c) (except when the condition is to show evidence of an outward ticket), failing without reasonable excuse to ensure that the person to whom the decision relates complies with it.	Failure to ensure person complies with certain conditions, except where the condition is to show evidence of an outward ticket.	1,000	500
349(1)(d)	Failing without reasonable excuse to provide the chief executive with information under section 102(2), (4), or (5) of the Act.	Failure to provide Passenger Name Record data for a person.	1,000	500
349(2)(a)	Failing without reasonable excuse to comply with any of the requirements of section 101(1)(a) of the Act.	Failure to ensure a person has the prescribed travel documentation.	5,000	2,500

- b. All infringement fees are payable to the Chief Executive of the **Ministry of Business, Innovation and Employment** who must pay all infringement fees received into a nominated Crown bank account.

#### **D7.35.40 Revocation of infringement notices**

*See also Immigration Act s 365*

*See also Immigration (Carriers' Infringement Offences, Fees and Forms) Regulations 2012*

An immigration officer may, by written notice to the person to whom the notice was issued, revoke an infringement notice at any time before:

- a. the infringement fee is paid; or
- b. an order for payment of fine is made by a court under section 21 the Summary Proceeding Act 1957.

### **E3.40 Cancellation of visas on triggering event**

*See also Immigration Act 2009 s 64*

- a. A visa is cancelled in the following circumstances:
  - i. on the deportation of its holder from New Zealand; or
  - ii. on the day after the first date on which a deportation order may be served on the person under section 175A of the Immigration Act 2009; or
  - iii. on the refusal of entry permission to its holder; or
  - iv. on entry permission granted to its holder being revoked; or
  - v. if the holder arrived at an immigration control area:
    - o on the holder leaving the immigration control area without presenting himself or herself to an immigration officer; or
    - o on the holder failing to comply with the instruction of an immigration officer to remain in the area; or
  - vi. if the holder arrived at a place other than an immigration control area, on failing to present himself or herself in the prescribed manner and within the prescribed time as required under section 103(1)(b) of the Immigration Act 2009; or
  - vii. on the start date of a further visa granted to its holder; or
  - viii. on the grant of New Zealand citizenship to its holder; or
  - ix. on the registration of New Zealand citizenship by descent under section 7(2) of the Citizenship Act 1977 by its holder;
  - x. on the issue of an evidentiary certificate under section 21 of the Citizenship Act 1977 that confirms the holder is a New Zealand citizen.
- b. Despite (vii) above, the grant of a temporary entry class visa to the holder of a residence class visa does not cancel the residence class visa unless the grant of the temporary entry class visa was made under section 68 of the Immigration Act 2009 (see [E3.50](#));
- c. To avoid doubt, if a person's visa is cancelled under (a)ii, the grant of a new visa to the person does not cancel the person's liability for deportation.

## **N1.1 Obligation of transit passenger**

*See also Immigration Act 2009 s86A, 115*

- a. During the transit period applying to a transit passenger, the transit passenger must remain:
  - i. on board the craft they came to New Zealand on; or
  - ii. in an immigration control area; or
  - iii. in the custody of the Police.
- b. If a transit passenger fails to comply with (a), the relevant transit period immediately expires and the person:
  - i. is unlawfully in New Zealand; and
  - ii. does not have any rights of appeal on humanitarian grounds so long as this section applies to the person; and
  - iii. is liable to be arrested and detained under Part 9 of the Immigration Act 2009; and
  - iv. is liable for turnaround.

## **N2.10 General rules for transit visas**

*See also Immigration Act 2009 s 86(1), 89(1)*

*See also Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 reg, 15, 17*

- a. Transit visas may be granted to applicants who:
  - i. apply in the prescribed manner (see [N3.10.1](#)) for a transit visa; and
  - ii. have stated a genuine intention to be in New Zealand only for the purpose of reaching a further destination; and
  - iii. will be confined to a transit area during the whole of their stay in New Zealand; and
  - iv. will not be in New Zealand longer than 24 hours.
- b. Holders of transit visas are not entitled to apply for entry permission or any class or type of visa while in New Zealand during the transit period.

### **N2.10.1 Currency of transit visa**

*See also Immigration Act 2009 s 88*

A transit visa is current for the period or until the date specified in it. The transit visa may be valid for any number of journeys to New Zealand in that period or **until** that date.

### **N2.10.5 Cancellation of transit visa**

*See also Immigration Act 2009 ss 66, 90*

- a. If there is sufficient reason, the Minister or an immigration officer may cancel a transit visa at any time.
- b. If a transit visa is cancelled based on (a) above; and
  - i. the person is outside New Zealand, the Minister or an immigration officer must notify the person in writing;
  - ii. the person has arrived in New Zealand, the person is liable for turnaround.

### **N2.10.10 Expiry of transit period**

*See also Immigration Act 2009 s 91*

- a. Where the holder of a transit visa is still in New Zealand on the expiry of the transit period, an immigration officer may by his or her absolute discretion:
  - i. extend the period for which the person may remain in New Zealand as a transit visa holder; or
  - ii. grant the person a visa and entry permission.

## **RA5.1 Effect of being liable for deportation on residence class visa applications**

*See also Immigration Act 2009 s 169 (3)*

- a. Under section 169 of the Immigration Act 2009, the processing of any application for a residence class visa from a person who has become liable for deportation must be suspended.
- b. Nothing in (a) prevents the processing of any application referred back to the Minister or the Chief Executive by the Tribunal under section 188(1)(d) or (e) of the Immigration Act 2009.

#### **Y4.40 People who may be refused entry permission: not supplying biometric information**

*See also Immigration Act 2009 s 111*

- a. A person who applies for entry permission (irrespective of whether the application is still being considered, or whether entry permission has been granted or refused) must allow biometric information to be collected from him or her if required to do so by an immigration officer:
  - i. at any time before the person leaves the immigration control area, designated place, or prescribed place at which the application is made; and
  - ii. if the application is not made in New Zealand, at any time before the person leaves the immigration control area or prescribed place at which he or she arrives in New Zealand.
- b. If a person fails to allow the biometric information to be collected, the Minister or an immigration officer may:
  - i. refuse to grant the visa or entry permission applied for or
  - ii. revoke any entry permission already granted.

**Note:** Entry permission may be revoked at any time before the person leaves the immigration control area, designated place, or prescribed place.