



15 July 2020

Immigration New Zealand Operational Manual: Amendment Circular No. 2020-30

To: All Manual Holders

AMENDMENTS TO THE IMMIGRATION NEW ZEALAND OPERATIONAL MANUAL

Introduction

This circular outlines changes to the Immigration New Zealand Operational Manual. A copy of the changes is attached.

All immigration officers dealing with immigration applications should read the amendments and operate in accordance with the amended instructions on and after their effective dates.

Note

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

Information about these changes is available on our website www.immigration.govt.nz.

Summary of contents

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 *Temporary Entry instructions* effective on and after 27 July 2020
- Appendix 2 contains amended *Temporary Entry and Residence instructions* effective on and after 27 July 2020

Additions to immigration instructions are highlighted for ease of reference. Deletions have not been highlighted.

Description of changes

Changes relating to the new framework for employer-assisted temporary work visas; and the version 1.3 update of the Australian New Zealand Standard Classification of Occupations (ANZSCO)

E3.26 Varying the conditions of temporary entry class visas

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WK4.1 Currency of Essential Skills work visas

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U8.20 Dependent children of holders of work visas

Appendix 7 - Occupations treated as exceptions

Changes have been made to immigration instructions effective on and after 27 July 2020, to:

- use remuneration to determine the following for an Essential Skills work visa application:
 - whether an employer has to engage with Ministry of Social Development (MSD) in order to meet the labour market test
 - the maximum duration of the visa
 - whether the person holding the visa can support a partnership/dependent based work visa or only a partnership/dependent based visitor visa without work rights.
- allow partners of Essential Skills work visa holders earning below the median wage to be granted visitor visas, and dependent children to be granted student or visitor visas (subject to meeting minimum income requirements). Note that anyone currently offshore will be subject to the border restrictions currently in place.
- add the occupations below to Appendix 7 of the INZ Operational Manual.
 - Aged or Disabled Carer;
 - Nursing Support Worker;
 - Driller and
 - Bicycle Mechanic.
- removing Appendix 7 from Temporary Entry instructions as the ANZSCO skill level is no longer used to determine the visa duration and conditions for Essential Skills visa applications.

- clarifying that applicants are eligible for lower-skilled Essential Skills visas for the maximum duration after spending 12 consecutive months outside New Zealand, regardless of the duration they held a lower-skilled Essential Skills visa prior to being outside New Zealand

Appendix 1 - Amendments to Temporary Entry instructions effective on and after 27 July 2020

E3.26 Varying the conditions of temporary entry class visas

See also *Immigration Act 2009* s 52

- a. Holders of temporary entry class visas should apply for a variation of the conditions of their visa if:
 - i. they wish to work and do not have a visa that allows work in New Zealand; or
 - ii. they hold a work or visitor visa and wish to undertake a programme of study in New Zealand for longer than 3 months (unless [U2.5](#) applies); or
 - iii. they hold a work visa limited by conditions and wish to change employers, and/or occupation and/or the place of employment; or
 - iv. despite the ban on travel to New Zealand by temporary entry class visa holders in response to COVID-19, they have a critical purpose to carry-out in New Zealand ([E3.27](#)).
- b. Immigration officers may grant a variation of conditions for cases (a) (i)– (iii) above) provided that the applicant completes an Application for Variation of Conditions and produces:
 - i. the appropriate fee;
 - ii. a valid passport (or a certified copy) or travel document (or a certified copy);
 - iii. documents which support the requested variation, such as:
 - iv. an offer of employment (see [W2.10.10](#)); or
 - v. an offer of place at a suitable education provider (see [U3.5](#)), and evidence of tuition fee payment or exemption (see [U3.10](#)); and
 - vi. any other documents or information requested by the immigration officer.
- c. A variation of conditions will only be granted where the varied conditions still meet the objectives of the instructions which the visa was granted under.
- d. A variation of conditions to work for a specific employer will only be granted where the employer meets requirements at [W2.10.5](#), [W2.10.6](#) and [W2.10.15](#).

E3.26.1 Varying the conditions of work visas

E3.26.1.1 Varying Essential Skills work visa conditions

- a. Essential Skills work visa holders seeking to change occupation or place of employment will not be granted a variation of conditions and must instead apply for a new work visa, unless:
 - i. their new occupation is listed on an Essential Skills in Demand list; and
 - ii. they meet the requirements of the list.
- b. Essential Skills work visa holders whose visa is based on employment paid at or above the median wage, and who are seeking to change to employment paid below the median wage ([WK3.5.1](#)), will not be granted a variation of conditions, and must instead apply for a new work visa.
- c. Essential Skills work visa holders whose visa was granted on the basis of employment assessed as higher-skilled or mid-skilled (for applications made before 27 July 2020), and who are seeking to change to employment paid below the median wage ([WK3.5.1](#)), will not be granted a variation of conditions, and must instead apply for a new work visa.

E3.26.1.5 Varying Specific Purpose or Event visa conditions

- a. Holders of a work visa granted under [WS2](#) as players or professional sports coaches may apply for a variation of conditions of their work visa to undertake additional employment. A variation of conditions may be granted if:
 - i. the terms of the existing employment have been met, and will continue to be met; and either
 - ii. the secondary employment is offered by the sports club or a company involved in the sport and the position is offered solely to this particular player or coach; or
 - iii. the secondary employment is offered by an employer other than the sports club or a company involved in the sport and an immigration officer is satisfied that there are no New Zealand citizens or residence class visa holders available to be employed in the position (see [WK3.10](#)).

E3.26.1.10 Varying Talent (Accredited Employers) work visa conditions

- a. Holders of a work visa granted under [WR1](#) (Talent Accredited Employers) Work Instructions) may apply for a variation of conditions of their work visa to change employers. A variation of conditions may be granted:
 - i. to undertake employment for another accredited employer; or
 - ii. to undertake employment for another employer who is not an accredited employer if their employment is no longer available due to reasons beyond the visa holder's control. When assessing such applications for a variation of conditions, immigration officers will consider all the circumstances of the

applicant and the reasons for which the former accredited employer did not continue employment or the former employer's accreditation was not renewed or rescinded.

- b. In order to be granted a variation of conditions under (a) above:
 - i. the base salary offered must be no less than the base salary that was required at the time the initial work visa application was made; and
 - ii. the offer of employment must meet the requirements of [WR1.10](#); and
 - iii. employers must meet the requirements under [W2.10.5](#), [W2.10.6](#), [W2.10.10](#) and [W2.10.15](#).

Notes:

~ Where a person fails to continue employment in the circumstances described in (a) and (b) above, they will not be eligible for residence under the Residence Instructions for holders of work visas granted under the Talent (Accredited Employers) Work Instructions.

~ For the avoidance of doubt, the base salary in (b) above excludes employment-related allowances (for example overtime, tool or uniform allowances). The base salary is calculated on the basis of 40 hours work per week.

E3.26.5 Varying the conditions of visitor visas

- a. Holders of visitor visas granted under [V3.100](#) Guardians accompanying students to New Zealand may only be granted a variation of conditions for part time work or part time study between the hours 9:30am and 2:30pm Monday to Friday (inclusive) (see [V3.100.35](#)).
- b. Holders of visitor visas may be granted a variation of conditions for a duration of six weeks to undertake seasonal work (planting, maintaining, harvesting and packing crops) in any region where the Ministry of Social Development has identified a shortage of seasonal labour and for any employer in the horticulture or viticulture industries, provided the applicant has not been granted a variation of conditions for this purpose since their most recent entry to New Zealand.

E3.26.10 Varying the conditions of student visas

Holders of student visas may be granted a variation of conditions to allow them to work in line with the requirements at [U13](#).

V3.10 Partners and dependent children of student or work visa holders

Subject to the provisions of [E4.5](#):

- a. Partners (see [E4.1.20](#)) of student or work visa holders may be granted visitor visas if that type of visa is appropriate to their needs for the currency of the partner's visa.
- b. Dependent children (see [E4.1.10](#)) of student or work visa holders may be granted visitor visas if that type of visa is appropriate to their needs for the currency of the parent's visa.
- c. Despite (a) and (b) above, partners and dependent children of the following persons are not eligible for the grant of a visa under these instructions:
 - i. people granted a work visa under the instructions for Foreign Crew of Fishing Vessels (see [WJ](#)); or
 - ii. people granted a work visa under the instructions for Recognised Seasonal Employer (RSE) (see [WH1](#)); or
 - iii. people granted a work visa under the instructions for Supplementary Seasonal Employment (SSE) (see [WH3](#)); or
 - iv. people granted a work visa under the Silver Fern Job Search Instructions ([WL2](#)); or
 - v. people granted a work visa under the Skilled Migrant Category Job Search Instructions (see [WR5](#)); or
 - vi. people granted a work visa under a Working Holiday Scheme (see [WI2](#)); or
 - vii. people granted a work visa as a domestic staff member of diplomatic, consular or official staff (see [WI4](#)).
- d. Partners and dependent children of people granted work to residence visas must meet health and character requirements for residence class visa applications as set out at [A4](#) and [A5.15](#) to [A5.25](#).

V3.10.5 Dependent children of Essential Skills work visa holders

- a. A dependent child of a holder of a work visa granted under the Essential Skills work instructions ([WK](#)) after 30 November 2009 will only be granted a visitor visa if the minimum income threshold is met.
- b. Despite (a) above, dependent children born in New Zealand after 30 November 2009 will not be tested against the threshold until their parent(s) next applies for an Essential Skills work visa.
- c. Despite (a) and (b) above, the minimum income threshold does not apply if the dependent child's parent(s):
 - i. have held any temporary work visa before 30 November 2009; and
 - ii. have remained on a valid visa from 30 November 2009 until the date of the dependent child's application under V3.10.

V3.10.10 Minimum income threshold

- a. The minimum income threshold is NZ\$43,322.76 gross per annum.
- b. The minimum income threshold must be met and maintained wholly by the salary or wages of a parent or parents holding an Essential Skills work visa.
- c. Evidence must be provided of the Essential Skills work visa holder's current salary or wages.
- d. Despite (a) above, if the dependent child is included in a Samoan Quota or Pacific Access Category application, the minimum income threshold is the amount specified in Samoan Quota or Pacific Access Category instructions.
- e. If a visa application is declined under these instructions and the dependent child becomes unlawful the parent(s) may become liable for deportation.
- f. If the parent(s) do not maintain the minimum income threshold for the duration of their or their dependent child's visa, both the child and the parent(s) may become liable for deportation.

Note: Where both parents hold Essential Skills work visas, their income may be combined to meet the minimum income threshold.

V3.10.15 Dependent children of work visa holders under Religious Worker instructions

See also *Immigration Act 2009 ss 56, 157*

- a. Dependent children of a holder of a work visa under Religious Worker instructions ([WM](#)) will only be granted a visitor visa if:
 - i. the minimum income threshold of NZ\$43,322.76 gross per annum is met by the Religious Worker visa holder and their partner; or
 - ii. the religious organisation sponsoring the principal applicant agrees to sponsor the dependent children.
- b. Under (a)(i) above:

- i. the minimum income threshold must be met and maintained by the salary, wages or a stipend received by the Religious Worker visa holder and their partner; and
- ii. evidence must be provided of the current salary, wages or stipend of the Religious Worker visa holder and their partner; and
- iii. if a visa application is declined under these instructions and the dependent child becomes unlawful the parents may become liable for deportation; and
- iv. if the parents do not maintain the minimum income threshold for the duration of their visa or their dependent child's visa, both the child and the parents may become liable for deportation.

Note: The income of both parents may be combined to meet the minimum income threshold.

W2.25 Conditions of work visas

See also Immigration Act 2009 ss 49, 52, 77

- a. A work visa may be granted with any or all of the following conditions as specified in immigration instructions or imposed by special direction by the Minister or an immigration officer with the delegated authority:
 - i. the holder may work only in a specified industry, trade, occupation or profession;
 - ii. the holder may work only for a specified employer;
 - iii. the holder may work only in a specified area or location;
 - iv. the holder must be paid at or above a specified remuneration level;
 - v. the holder must provide evidence of remuneration payment, if requested by an immigration officer;
 - vi. any other condition the immigration officer or Minister considers is appropriate to reflect the reason for which the visa is being granted.

WF3.1 Who is eligible for a special work visa

- a. Partners (see [E4.1.20](#)) of people granted work visas (including visas granted under Entrepreneur Work Visa Category instructions) allowing a stay in New Zealand of more than six months may apply for and be granted a multiple entry work visa under these instructions, unless their partner has been granted a work visa under any one of the following instructions:
 - i. Essential Skills where the employment has been assessed as **being paid below the median wage** (see [WK3.5.1](#)), **or lower-skilled if the visa application was made before 27 July 2020**, unless WF3.1.1 below applies; or
 - ii. Foreign crew of fishing vessels (see [WJ](#)); or
 - iii. a Working Holiday Scheme (see [WI2](#)); or
 - iv. Recognised Seasonal Employer (RSE) Work Instructions (see [WH1](#)); or
 - v. Supplementary Seasonal Employer (SSE) Instructions (see [WH3](#)); or
 - vi. Silver Fern Job Search Instructions (see [WL2](#)); or
 - vii. Skilled Migrant Category Job Search Instructions (see [WR5](#));
 - viii. domestic staff of diplomatic, consular, or official staff (see [WI4](#)).
- b. Work visas will be granted for the same period as the work visa held by the applicant's partner subject to the generic requirements at [E4.5](#) being met.
- c. Partners of people granted work to residence visas must meet health and character requirements for residence class visa applications as set out at [A4](#) and [A5.15](#) to [A5.25](#).
- d. Applicants under these instructions are not required to produce a job offer.
- e. Any work visas granted under these instructions may be endorsed with conditions that allow work for any employer.

WF3.1.1 Holders of Essential Skills work visas **based on employment assessed as being paid below the median wage who are able to support work visas for their partner**

- a. The applicant (who is the partner of the holder of an Essential Skills work visa whose employment has been assessed as **being paid below the median wage** (see [WK3.5.1](#)), **or lower-skilled if the visa application was made before 27 July 2020**, may be granted a work visa under these instructions if:
 - i. the applicant held a visa on the basis of their relationship to the Essential Skills work visa holder on 28 August 2017; and
 - ii. that Essential Skills work visa holder has not been required to spend 1 year outside New Zealand (subject to a stand-down period)(see [WK3.20.5](#)).
- b. The applicant (who is the partner of the holder of an Essential Skills work visa whose employment has been assessed as **being paid below the median wage**, **or lower-skilled if the visa application was made before 27 July 2020**), may be granted a work visa under these instructions if the Essential Skills work visa holder:
 - i. previously held a student visa; and
 - ii. was eligible to support a partner for a work visa ([WF4.1](#)) at the time they held the student visa; and
 - iii. held a post-study work visa ([WD](#)) based on that student visa; and
 - iv. supported the applicant for a visa based on the relationship while holding a post-study work visa.

WK1.5 Overview

- a. Essential Skills work instructions provide for the grant of work visas to overseas workers with an offer of employment to work in New Zealand.
- b. Essential Skills work visas may only be granted if:
 - i. the employment is acceptable ([WK3.5](#)); and
 - ii. there are no New Zealand citizens or residents available for the work ([WK3.10](#)); and
 - iii. the employer meets requirements ([WK3.15](#)); and
 - iv. the applicant meets requirements ([WK3.20](#)).
- c. The remuneration paid with respect to the employment ([WK3.5.1](#)) determines the currency of an Essential Skills work visa granted and the ability of an Essential Skills work visa holder to support temporary visas for family members.

WK1.5.1 Applications with approval in principle

- a. Employers wishing to recruit foreign workers for a specific role or roles may request approval in principle (AIP).
- b. When considering a request for approval in principle, Immigration New Zealand will assess the availability of New Zealanders to do the work, and the requirements related to the employment and the employer, in advance of the applicant making a work visa application.
- c. Where an Essential Skills work visa application is made based on AIP, generally only the requirements related to the applicant ([WK3.20](#)) will be assessed.

WK1.5.5 Applications without approval in principle

- a. Overseas workers who have been offered employment in New Zealand do not require approval in principle and may apply directly to Immigration New Zealand for an Essential Skills work visa.
- b. In the case of a direct application for an Essential Skills work visa, requirements related to the employment, employer, applicant and the availability of New Zealanders will be assessed together.

WK2.1 Lodging an Essential Skills work visa application

- a. Applications for Essential Skills work visas must be lodged in the prescribed manner (see [E4.50](#)) and include an Employer Supplementary Form (INZ 1113) completed by the employer.
- b. Applicants who hold a work visa with remuneration as a condition of that visa (see [WK4.5\(d\)](#)), must include evidence of their remuneration payment, such as Inland Revenue income summaries and bank statements.
- c. Applicants must provide:
 - i. a copy of the proposed employment agreement; and
 - ii. a copy of the signed offer of employment (see [W2.10.10](#)).
- d. Applications made on the basis of an offer of employment **paid below the median wage** must include a valid Skills Match Report prepared by Work and Income, unless:
 - i. the employer holds valid approval in principle for the role identified; or
 - ii. the role is on an Essential Skills in Demand list and the applicant meets the qualification and/or experience requirements; or
 - iii. Work and Income have advised Immigration New Zealand of a regional absolute labour shortage ([WK3.10.1 \(e\)\(i\)](#)); or
 - iv. the role is included in a list of occupations published by Work and Income that are exempt from the Skills Match Report process, and meets any additional requirements of that list (e.g. region of employment).

Note: A Skills Match Report may be used to support more than one work visa application, as long as it remains valid. A copy of the Skills Match Report should be included with each visa application.

WK2.5 Lodging a request for approval in principle to recruit overseas workers

- a. Applications for approvals in principle must be made on the form 'Request for Approval in Principle' (INZ 1112).
- b. A request for approval in principle must be accompanied by evidence that:
 - i. the employment is acceptable ([WK3.5](#)); and
 - ii. there are no New Zealand citizens or residents available for the work ([WK3.10](#)); and
 - iii. the employer meets requirements ([WK3.15](#)).
- c. To determine the remuneration level of the proposed employment, evidence must be provided of:
 - i. the proposed remuneration; and
 - ii. the hours of work, or of the arrangements relating to the number of hours to be worked.

WK3.1 Assessing an Essential Skills application or a request for approval in principle to recruit overseas workers

- a. To approve an Essential Skills work visa, an immigration officer must be satisfied that:
 - i. the employment is acceptable as specified at [WK3.5](#); and
 - ii. there are no New Zealand citizens or residents available for the work as specified at [WK3.10](#); and
 - iii. the employer meets requirements as specified at [WK3.15](#); and
 - iv. the applicant meets requirements as specified at [WK3.20](#).
- b. To approve an Essential Skills work visa made on the basis that the employer has approval in principle (AIP), an immigration officer:
 - i. must be satisfied the applicant meets requirements for Essential Skills work visa applicants ([WK3.20](#)) and any requirements specified in the approval in principle; and
 - ii. may rely on the AIP to satisfy the requirements of WK3.1(a)(i-iii).
- c. Despite WK3.1(b), where an immigration officer has reasonable grounds for determining that the labour market, or circumstances of the employment or of the employer have materially altered since the grant of approval in principle, they may undertake further checks to ensure the provisions of WK3.1(a)(i-iii) are still satisfied.
- d. In cases where the employer supporting a work visa application currently holds or has previously held AIP which has lapsed for that position, the conditions specified in the AIP will continue to apply, unless the employer can satisfy the immigration officer that the circumstances of employment have changed.
- e. INZ may, on an exceptional basis, require an employer to apply for AIP to recruit overseas workers for the purposes of assessing any further work visa applications supported by the employer. This requirement will be imposed only where an employer's recruitment of non-New Zealand citizen or residence class visa holder workers is such that it is appropriate to undertake a labour market test for future applications collectively with an AIP, rather than on an individual basis. In these circumstances any further application for a work visa supported by that employer which is not associated with a valid AIP may be declined.

WK3.1.5 Assessing a request for approval in principle to recruit overseas workers

- a. To grant approval in principle to recruit overseas workers, an immigration officer must be satisfied that:
 - i. the employment is acceptable as specified at [WK3.5](#); and
 - ii. there are no New Zealand citizens or residents available for the work as specified at [WK3.10](#); and
 - iii. the employer meets requirements as specified at [WK3.15](#).
- b. Where approval in principle to recruit foreign workers is granted, the approval must specify:
 - i. the duration the approval is valid for; and
 - ii. the duration of the work visa(s) to be granted to the eligible applicants who apply on the basis of the approval in principle; and
 - iii. the number of positions the employer has been approved to recruit for; and
 - iv. the **remuneration level** of the employment that the employer has been approved to recruit for; and
 - v. the occupation(s) that the employer has been approved to recruit for; and
 - vi. the location(s) that the employer has been approved to recruit for; and
 - vii. the training and/or work experience necessary for applicants to be considered qualified for the position(s); and
 - viii. any undertakings the employer has agreed to as part of the job offer (such as provision of accommodation) and any other conditions deemed necessary by the immigration officer.
- c. No approval in principle application for the recruitment of workers to plant, maintain, harvest or pack crops in the horticulture or viticulture industries will be approved under these instructions. All requests to recruit non-New Zealand citizen or residence class visa holder workers to plant, maintain, harvest or pack crops in the horticulture or viticulture industries must be made under Recognised Seasonal Employer (RSE) instructions (see WH1) or the Supplementary Seasonal Employment (SSE) instructions (see [WH3](#)).

WK3.5 Acceptable employment

- a. To grant an Essential Skills work visa, an immigration officer must be satisfied that:
 - i. the offer of employment meets the requirements set out at [W2.10.10](#); and
 - ii. the employment offered is genuine, sustainable and full-time for the duration of the employment period specified in the employment agreement; and
 - iii. payment is by wages, or salary; and
 - iv. the rate of pay is not less than the market rate for New Zealand workers in that occupation (regardless of whether the occupation is on one of the Essential Skills in Demand Lists).
- b. An immigration officer will assess the employment offered to determine the remuneration level of that employment (WK3.5.1).
- c. Applications for visas under Essential Skills instructions for self-employment must be declined.
- d. Applications for visas under Essential Skills instructions related to planting, maintaining, harvesting or packing crops in the horticulture or viticulture industries must be declined.

Note: Applications for work visas to plant, maintain, harvest or pack crops in the horticulture or viticulture industries must be made under the Recognised Seasonal Employer (RSE) Instructions (see WH1) or the Supplementary Seasonal Employment Instructions (see [WH3](#)).

WK3.5.1 Determining the remuneration level of employment

- a. An immigration officer will assess the employment offered to determine whether the remuneration offered, as calculated under WK3.5.5, will be either 'paid at or above the median wage' or 'paid below the median wage'.
- b. Employment will be assessed as being 'at or above the median wage' if the remuneration offered is at or above \$25.50 per hour.
- c. Employment will be assessed as being 'below the median wage' if the remuneration offered and paid is below \$25.50 per hour.

Note: The remuneration requirements set out in WK3.5.1 will be updated in November each year based on New Zealand income data.

WK3.5.5 Calculating remuneration

- a. Remuneration will be calculated on the basis of payment per hour.
- b. Remuneration will be calculated according to the hours of work stated in the employment agreement.
- c. If the employment agreement specifies payment by salary, the payment per hour will be calculated by dividing the annual salary by 52 weeks, followed by the number of hours that will be worked each week.
- d. If the employment agreement specifies payment other than by hour (including payment by salary), and the hours of work are variable, an immigration officer may request evidence of the range of hours to be worked in order to calculate the remuneration.
- e. Hours of work per week will be considered variable where the employment agreement contains a provision allowing the employer to request or require the employee to work additional hours from time to time.
- f. Where evidence of the range of hours is provided in terms of (d) above or where the employment agreement specifies a range of hours, the maximum hours will be used to calculate the remuneration.
- g. Each hour of work must be paid at or above \$25.50, for employment to be assessed as paid at or above the median wage (see WK3.5.1.b).
- h. For the purposes of WK3.5.5, remuneration includes:
 - i. the agreed value of any reasonable deduction from the applicant's salary or wages for goods or services; and
 - ii. in the case of accommodation provided in connection to the employment:
 - o the agreed value of any reasonable deduction from the applicant's salary or wages for that accommodation; or
 - o if accommodation is provided by the employer, and there is no deduction from the applicant's salary or wages for that accommodation, the market rental value of the accommodation provided; or
 - o if an accommodation allowance is provided, the amount of that allowance.

Note: In relation to WK3.5.5(h)(ii) above, the meaning of accommodation, and the value of accommodation that is included in the definition of 'remuneration', reflects the definition of accommodation and the value of accommodation that forms part of a person's income under section CE 1 of the Income Tax Act 2007.

- i. For the purposes of WK3.5.5, remuneration excludes other employment-related allowances (for example tool, or uniform allowances), and bonuses which are dependent on performance.

WK3.10 Determining the availability of New Zealand citizens or residents

- a. New Zealand citizens or residence class visa holder workers are considered to be 'available' if, as a result of a labour market test (see WK3.10.1), an immigration officer establishes that there are:
 - i. suitable New Zealand citizens or residence class visa holder workers who can take up the work on offer (see WK3.10.10); or
 - ii. suitable New Zealand citizens or residence class visa holder workers who can readily be trained to do the work on offer (see WK3.10.15).
- b. Immigration officers will accept that no suitably qualified New Zealand citizens or residence class visa holders are available where an occupation is included on the current Long Term Skill Shortage List, Regional Skill Shortage List or Construction and Infrastructure Skill Shortage List and the applicant's qualification and/or work experience meets the requirements on the list.
- c. It is not relevant to the determination of availability of New Zealand citizens or residence class visa holder workers whether those New Zealand citizen or residence class visa holder workers are prepared to do the work on the terms and conditions proposed by the employer.

Note: The Essential Skills in Demand Lists are published on the immigration website at <http://skillshortages.immigration.govt.nz>.

WK3.10.1 Labour market tests

- a. When conducting a labour market test an immigration officer must be satisfied that:
 - i. the employer has made a genuine attempt to attract and recruit suitable New Zealand citizens or residence class visa holder workers (see WK3.10.5); and
 - ii. New Zealand citizens or residence class visa holder workers are not available (WK3.10).
- b. Matters an immigration officer may take into account when determining whether or not a labour market test is satisfied include but are not limited to:
 - i. the employer's case in support of an individual worker's application; and
 - ii. evidence of a genuine attempt (see WK3.10.5) on the part of the employer to recruit New Zealand workers by way of advertising and/or use of other appropriate avenues of recruitment likely to attract New Zealand workers; and
 - iii. advice from Work and Income about the availability of New Zealand citizens or residence class visa holder workers to do the work offered; and
 - iv. advice from relevant stakeholders within the particular industry, including unions.
- c. In any particular case an immigration officer may decide to:
 - i. determine the labour market test is satisfied by one or more of the above; or
 - ii. determine that the labour market test is not satisfied by one or more of the above; or
 - iii. make other inquiries.
- d. Despite (c) above, but subject to (e) below, where the employment is paid below the median wage (see WK3.5.1.c), immigration officers must consider advice from Work and Income when determining whether there are New Zealand citizen or residence class visa holder workers available to undertake the work offered.
- e. The requirement in (d) above does not apply:
 - i. for any period of time where Work and Income has advised INZ of a regional absolute labour shortage for a specified occupation or industry, and the work offered is both for that occupation or industry, and in the region specified; or
 - ii. where the role is included in a list of occupations published by Work and Income that are exempt from the Skills Match Report process, and meets any additional requirements of that list (e.g. region of employment).

WK3.10.5 Definition of 'genuine attempts'

- a. For the purpose of these instructions an employer is considered to have made genuine attempts to recruit suitable New Zealand citizens or residence class visa holder workers if:
 - i. any specifications or requirements stipulated in a job description and/or ideal person specification are restricted to those specifications or requirements necessary to perform the work on offer; and
 - ii. the terms and conditions specified for the work on offer are not less than those of the New Zealand market, including payment at the New Zealand market rate; and
 - iii. the extent and nature of advertising or use of other appropriate means of recruitment is such that any suitable New Zealand workers would apply or be likely to apply for the position(s), for example:
 - o listing the vacancy with Work and Income;
 - o advertising the vacancy in a national newspaper and/or website;

- contracting a recruitment company appropriate to the industry.
- b. For the purposes of these instructions an employer is not considered to have made genuine attempts to recruit suitable New Zealand citizens or residence class visa holders if:
 - i. the employer has advertised the work in such a way that no New Zealand citizen or residence class visa holder will or is likely to apply (e.g. making foreign language skills a requirement when it is not necessary for the performance of the work); or
 - ii. an employer has advertised the work at terms and conditions that are less than terms and conditions New Zealand citizens or residence class visa holders typically receive for equivalent work; or
 - iii. a Skills Match Report is required by WK2.1(d) and an immigration officer is satisfied the employer has not considered available New Zealand citizens or residence class visa holders referred by Work and Income.

WK3.10.10 Definition of 'suitable New Zealand citizens or residence class visa holder workers who can take up the work on offer'

For the purpose of these instructions a 'suitable New Zealand citizen or residence class visa holder worker who can take up the work on offer' is a New Zealand citizen or residence class visa holder worker who:

- a. has the relevant recognised qualification which is at, or above, the qualification described for **the matching** occupation in the ANZSCO (**see WK3.20.2 below**) or has the relevant recognised work experience that the ANZSCO indicates may substitute the required qualification; and
- b. has qualifications, work experience or skills identified by the employer as being necessary to perform the role, but which are not described for **the matching** occupation in the ANZSCO (**see WK3.20.2 below**), that are determined by an immigration officer to be reasonable; and
- c. has other competencies identified by the employer as necessary for the performance of the work that are determined by an immigration officer to be reasonable including (but not limited to):
 - i. having a driver licence or ability to get one, or
 - ii. being fit enough to do the work or not have any medical or other reasons why they cannot perform the work, especially for physical work, or
 - iii. being able to pass health, drug and criminal checks if required; and
- d. is located in the local region, or is willing and able to move to that region; and
- e. can practically make it to the workplace by having a suitable mode of transport; and
- f. is available for work at the hours required by the employer, noting that the position must be for full-time employment (**see WK3.5.a.ii**).

Notes:

- Local region is defined based on the regions used by Work and Income.
- At ANZSCO skill level 5, work experience and qualifications are not relevant.
- Where other prerequisites are needed to perform the role an employer must explain why and demonstrate that the remuneration offered reflects those requirements.

WK3.10.15 Definition of 'suitable New Zealand citizens or residence class visa holder workers who can readily be trained to do the work on offer'

For the purpose of these instructions a 'suitable New Zealand citizen or residence class visa holder worker who can readily be trained to do the work on offer' is a New Zealand citizen or residence class visa holder worker who:

- a. with on the job training could do the work on offer, despite not having:
 - i. the relevant recognised qualification which is at, or above, the qualification described for **the matching** occupation in the ANZSCO (**see WK3.20.2 below**) or the relevant recognised work experience that the ANZSCO indicates may substitute the required qualification; and
 - ii. the qualifications, work experience or skills identified by the employer as being necessary to perform the role, but which are not described for **the matching** occupation in the ANZSCO (**see WK3.20.2 below**), that are determined by Immigration New Zealand to be reasonable; and
- b. has other competencies identified by the employer as necessary for the performance of the work that are determined by an immigration officer to be reasonable including (but not limited to):
 - i. having a driver licence or ability to get one, or
 - ii. being fit enough to do the work or not have any medical or other reasons why they cannot perform the work, especially for physical work, or
 - iii. being able to pass health, drug and criminal checks if required; and
- c. is located in the local region, or is willing and able to move to that region; and
- d. can practically make it to the workplace by having a suitable mode of transport; and
- e. is available for work at the hours required by the employer, noting that the position must be for full-time employment (**see WK3.5.a.ii**).

Notes:

- Local region is defined based on the regions used by Work and Income.
- All positions at ANZSCO skill level 5 are positions which New Zealand citizens and residence class visa holder workers are considered able to **be** 'readily be trained to do the work on offer'

WK3.15 Requirements for employers

- To grant an Essential Skills work visa, an immigration officer must be satisfied that:
 - the employer is the direct employer, responsible for such things as:
 - payment of salaries;
 - PAYE tax instalments;
 - conditions of employment;
 - day-to-day supervision of the workplace and the employee; and
 - the employer has previously complied and will comply in future with all relevant New Zealand employment and immigration law and immigration instructions; and
 - the employer has previously paid any employees who were holders of an Essential Skills work visa the remuneration required by those employees' work visa conditions (see [WK4.5\(d\)](#)); and
 - the employer meets the requirements set out at [W2.10.15](#) and is not included on a list of non-compliant employers maintained by the Labour Inspectorate (see [Appendix 10](#)).
- Where the job offer is in the construction sector in the Canterbury region and the employer is a labour hire company, the application must be declined unless the labour hire company holds accreditation (see [WK5](#)).

Note: Employment is in the Canterbury region if the entire or principal place of work is within the territorial authorities of Christchurch City Council, Selwyn District Council or Waimakariri District Council

WK3.15.1 Evidence required from employers

- Employers requesting approval in principle to employ a non-New Zealand citizen or residence class visa holder worker or supporting an individual work visa application must provide:
 - job offer(s) containing all the information specified in the generic work visa provisions at [W2.10.10](#); and
 - confirmation of whether or not the worker requires occupational registration in New Zealand; and
 - if more than one, the number of temporary workers sought; and
 - the names of suitable applicants (if known); and
 - evidence of genuine attempts to recruit suitable New Zealand citizens or residence class visa holders (see [WK3.10.5](#)), including the reasons why:
 - any particular job specifications were considered necessary for the performance of the work; and
 - any New Zealand **citizens or resident class visa holder workers** who applied were either not suitable, or refused to perform the work; and
 - if requested by an immigration officer, evidence and/or confirmation of past compliance with employment and immigration law (see [W2.10.5](#)); and
 - if the job offer(s) is in the construction sector in Canterbury region and the employer is a labour hire company, confirmation of the labour hire company's accreditation.

Note: Employment is in the Canterbury region if the entire or principal place of work is within the territorial authorities of Christchurch City Council, Selwyn District Council or Waimakariri District Council.

- Evidence and/or confirmation of past and future compliance with employment and immigration law may include but is not limited to:
 - employment agreements with workers which demonstrate compliance;
 - tax records that show compliance with employment agreements and visa conditions;
 - a history with the Ministry of Business, Innovation and Employment and WorkSafe New Zealand of past compliance.
- Employers who are included on a list of non-compliant employers maintained by the Labour Inspectorate are considered to not have a history of compliance with employment law (see [W2.10.15](#) and [Appendix 10](#)).
- Employers who have previously failed to pay any employee the remuneration required by the employee's visa conditions are considered to not have a history of compliance with immigration law.

WK3.20 Requirements for applicants

To grant an Essential Skills work visa, an immigration officer must be satisfied that the applicant:

- a. is suitably qualified by training and experience to do the work offered; and
- b. if the Essential Skills work visa applied for is based on employment paid below the median wage (WK3.5.1.c), is not subject to a stand-down period – see WK3.20.5.

WK3.20.1 Determining that an applicant is suitably qualified

- a. When assessing whether an applicant is suitably qualified by training and experience to do the work offered, immigration officers will consider the qualifications and work experience required by the occupation in the ANZSCO which substantially matches the applicant's proposed employment (see WK3.20.2 below).
- b. Immigration officers must consider whether:
 - i. the applicant holds a relevant qualification that is comparable to the qualification described for that occupation in the ANZSCO; or
 - ii. the applicant has the relevant work experience that the ANZSCO indicates may substitute for the required qualification; or
 - iii. the employment is in an occupation included on the Essential Skills in Demand Lists and the applicant meets the relevant requirements specified for that occupation.
- c. Immigration officers must be satisfied that the qualifications and/or work experience provided by the applicant are relevant to their proposed employment in New Zealand.

WK3.20.2 Assessment that employment substantially matches an ANZSCO occupation

- a. When assessing whether an offer of employment substantially matches a particular occupation in the ANZSCO, an immigration officer must be satisfied that the duties and responsibilities in the employment offer match the description of that occupation as set out in the ANZSCO.
- b. Where related occupations are described by the same task list in the ANZSCO, an immigration officer may disregard tasks not relevant to the occupation that most closely matches the employment offered.

WK3.20.5 Applicants who are required to spend time outside New Zealand (subject to a 'stand-down period')

- a. An Essential Skills work visa holder may hold visas based on employment that is paid below the median wage (as defined in WK3.5.1) for a maximum period of 3 years before they are subject to a stand-down period (see (d) below).
- b. For the purposes of (a) above, an Essential Skills work visa based on employment that is paid below the median wage includes an Essential Skills work visa based on lower-skilled employment (for which an application was made before 27 July 2020).
- c. The maximum 3 year period referred to in (a) above only includes time during which the Essential Skills work visa holder held visas based on employment that is paid below the median wage since the most recent period during which the visa holder spent 12 consecutive months outside New Zealand.
- d. Applicants subject to a stand-down period are not eligible for an Essential Skills work visa based on employment paid below the median wage until they spend 12 consecutive months outside New Zealand.
- e. Essential Skills work visas applied for before 28 August 2017 are not considered when calculating the 3 year maximum period.

WK3.20.10 Determining an Essential Skills work visa application where an applicant is awaiting a Skilled Migrant Category decision

- a. Despite WK3.1 (a)(ii), an applicant may be granted an Essential Skills work visa, valid for 1 year without an immigration officer being satisfied that there are no New Zealand citizens or residence class visa holders available to do the work offered if:
 - i. they currently hold a temporary work visa; and
 - ii. they have applied for an Essential Skills work visa to continue working in the role they currently hold; and
 - iii. they meet all other requirements of Essential Skills work visa instructions; and
 - iv. they have been issued an Invitation to Apply under the Skilled Migrant Category and retain the ability to apply (see SM3.1), or have made an application for residence under the Skilled Migrant Category and that application has not yet been completed; and
 - v. their Expression of Interest was selected in part on the basis of points claimed for skilled employment in the role they currently hold.

- b. One further Essential Skills work visa, valid for six months, may be granted in exceptional circumstances to an applicant who continues to meet the requirements of (a) above.

WK3.20.15 Determining an Essential skills work visa application for Filipino dairy workers who have provided false documents

- a. The intent of this section of Essential Skills instructions is:
 - i. to recognise that the dairy industry is of particular importance to the New Zealand economy, particularly in regional and rural New Zealand;
 - ii. to acknowledge significant levels of false and misleading information have been identified in previous work visa applications to work in the dairy industry; and
 - iii. to acknowledge that declining a large number of work visa applications for failing to meet the requirement to be of good character would have a detrimental effect on the dairy industry.
- b. These instructions apply to people who:
 - i. are nationals of the Philippines;
 - ii. are in New Zealand holding an Essential Skills work visa (or an interim visa based on holding an Essential Skills work visa at the time they made an application);
 - iii. are subject to [A5.45\(b\)](#) as an immigration officer has established that, on the balance of probabilities, in the course of applying for a New Zealand visa they provided any statement, information, evidence or submission that was false, misleading or forged;
 - iv. were granted an Essential Skills work visa to work on a dairy farm before 1 September 2015; and
 - v. are applying for a further Essential Skills work visa to work on a dairy farm.
- c. Despite the character requirement set out at [A5.45\(b\)](#) a person to whom (b) above applies may be granted an Essential Skills work visa if they:
 - i. have not subsequently withheld information or provided further false information to INZ, in particular with regard to the application in which they originally supplied false information; and
 - ii. meet all other criteria for the grant of an Essential Skills visa.

WK3.20.20 Minimum income requirement for dependent children of Essential Skills work visa holders

See also Immigration Act 2009 s 49(1)(b)

- a. Essential Skills visa holder **workers** who **wish** to support their dependent child's visitor or student visa application, must meet a minimum income threshold **specified at V3.10.10 or U8.20.5.b**. The visa holder's dependent child will be assessed against criteria set out in [V3.10.5](#) or [U8.20.5](#).
- b. Parents holding Essential Skills work visas may be liable for deportation if the dependent child's visa application is declined under these instructions and the dependent child becomes unlawful.
- c. It will be a condition of the dependent child's visa and the parent/s visa(s) that the parent/s must maintain the minimum income threshold for the duration of their dependent child's visa. If the threshold is not maintained the parent/s and child may be liable for deportation.

Note: Where both parents hold Essential Skills work visas, their incomes may be combined to meet the minimum income threshold.
The minimum income threshold excludes employment-related allowances (for example tool or uniform allowances) and must be calculated on the basis of no more than 40 hours' work per week

WK4.1 Currency of Essential Skills work visas

- a. An Essential Skills work visa may be granted for the period for which the employment is offered, up to a maximum of:
 - i. 3 years for employment **paid at or above the median wage**; or
 - ii. 6 months for employment assessed as lower-skilled, where the application is made between 10 July 2020 and 10 January 2022 inclusive, unless a 6 month visa would result in the holder exceeding the 3 year maximum period holding Essential Skills visas for lower-skilled employment ([WK3.20.5](#)); or
 - iii. 1 year for employment **paid below the median wage**, where the application is made from 11 January 2022, unless a 1 year visa would result in the holder exceeding the 3 year maximum period allowed under ([WK3.20.5](#)); or
 - iv. 3 years for employment for an accredited labour hire company; or
 - v. 1 year or 6 months if the applicant meets the requirements at [WK3.20.10](#) for people also applying under the Skilled Migrant Category for a resident visa.
- b. Where the grant of a 6 month or 1 year visa, for employment **paid below the median wage**, would result in the holder exceeding the maximum period allowed under [WK3.20.5](#), the visa may be granted for the remainder of the 3 year period.
- c. Despite (a) above, if an application for a work visa is approved on the basis of approval in principle issued prior to **27** July 2020, the duration of that work visa may be consistent with the duration stated in that approval in principle.

Note: The maximum periods allowed under [WK3.20.5](#) are based on the total period that the applicant held Essential Skills work visas to work in **employment assessed as paid below the median wage (and/or** lower-skilled employment **for applications made prior to 27 July 2020), and applies** regardless of whether the holder was inside or outside New Zealand while holding the visa.

WK4.5 Conditions of Essential Skills Work Visas

Essential Skills work visas will be subject to conditions that the holder:

- a. may work only in a specified industry, trade, occupation or profession; and
- b. may work only for a specified employer; and
- c. may work only in a specified area or location; and
- d. must be paid at or above a specified remuneration level where the visa is based on employment paid at or above the median wage; and
- e. must provide evidence of the payment of remuneration if requested by an immigration officer.

U8.20 Dependent children of holders of work visas

- a. Dependent children (see [E4.1](#)) of work visa holders who wish to study in New Zealand may be granted student visas unless the work visa holder has been granted a work visa under any one of the following categories:
 - i. Foreign crew of fishing vessels (see [WJ](#)); or
 - ii. Recognised Seasonal Employer (RSE) Work instructions (see [WH1](#)); or
 - iii. Supplementary Seasonal Employment (SSE) instructions (see [WH3](#)); or
 - iv. Silver Fern Job Search Instructions (see [WL2](#)); or
 - v. Skilled Migrant Category Job Search Instructions (see [WR5](#)); or
 - vi. Working Holiday Scheme instructions (see [WI2](#)); or.
 - vii. domestic staff of diplomatic, consular or official staff (see [WI4](#)).
- b. Dependent children of work visa holders as defined in (a) above are regarded as domestic students (see [U3.35](#)) for the purpose of all tuition fees at primary and secondary schools for the period of the parent's work visa.
- c. Dependent children (see [E4.1](#)) of work visa holders may be granted student visas without the need to produce evidence of enrolment.
- d. Guarantees of accommodation and/or maintenance for dependent children may be waived provided this is covered by the income of the work visa holder parent or by evidence of funds or guarantees submitted with the work visa application of the parent (see [W2.15](#)).
- e. Dependent children of people granted work to residence visas must meet health and character requirements for residence class visa applications as set out at [A4](#) and [A5.15](#) to [A5.25](#).

U8.20.5 Dependent children of Essential Skill work visa holders

See also *Immigration Act 2009 ss 56, 157*

- a. Dependent children (see [E4.1.10](#)) of holders of work visas granted under the Essential Skills work instructions (WK) after 30 November 2009 will only be granted a student visa if their parent(s) meet a minimum income threshold.
- b. The minimum income threshold is NZ\$43,322.76 gross per annum and must be met and maintained wholly by the salary or wages of a parent or parents holding an Essential Skills work visa.
- c. Evidence must be provided of the Essential Skills work visa holder's current salary or wages to satisfy an immigration officer that the applicant's parent(s) meet the minimum income threshold.
- d. Despite (b) above, dependent children of Essential Skills work visa holders whose parents have an application being considered under the Samoan Quota or Pacific Access Category must meet the minimum income requirements of those instructions (see [S1.10.35](#) or [S1.40.35](#)) to be eligible for a student visa under these instructions.
- e. Dependent children are not required to be assessed against the Essential Skills minimum income threshold if their parent(s):
 - i. have held any temporary work visa before 30 November 2009; and
 - ii. have remained on a valid visa from 30 November 2009 until the date of the dependent child's application under U8.20.
- f. If a visa application is declined under these instructions and the dependent child becomes unlawful the parent(s) may become liable for deportation.
- g. If the parent(s) do not maintain the minimum income threshold for the duration of their or their dependent child's visa both the parent(s) and child may become liable for deportation.

Note: Where both parents hold Essential Skills work visas, their income may be combined to meet the minimum income threshold.

U8.20.10 Dependent children of work visa holders under Religious Worker instructions

See also *Immigration Act 2009 ss 56, 157*

- a. Dependent children of a holder of a work visa under Religious Worker instructions ([WM](#)) will only be granted a student visa if the:
 - i. minimum income threshold is met by the Religious Worker visa holder and their partner; or
 - ii. religious organisation sponsoring the principal applicant agrees to sponsor the dependent children.
- b. Under (a)(i) above:
 - i. the minimum income threshold is NZ\$43,322.76 gross per annum; and
 - ii. the minimum income threshold must be met and maintained by the salary, wages or a stipend received by the Religious Worker visa holder and their partner; and
 - iii. evidence must be provided of the current salary, wages or stipend of the Religious Worker visa holder and their partner; and

- iv. if a visa application is declined under these instructions and the dependent child becomes unlawful the parents may become liable for deportation; and
- v. if the parents do not maintain the minimum income threshold for the duration of their visa or their dependent child's visa, both the child and the parents may become liable for deportation.

Note: The income of both parents may be combined to meet the minimum income threshold.

Appendix 2 - Amendments to Temporary Entry and Residence instructions effective on and after 27 July 2020

Appendix 7 - Occupations treated as exceptions

The occupations listed below may be eligible for points for skilled employment (see [SM6.10.5\(b\)](#)).

- 421111 Child Care Worker
- 421112 Family Day Care Worker
- 421114 Out of School Hours Care Worker
- 422116 Teachers' Aide
- 423411 Child or Youth Residential Care Assistant
- 423413 Refuge Worker
- 451111 Beauty Therapist
- 451412 Tour Guide
- 451612 Travel Consultant
- 451811 Civil Celebrant
- 452211 Bungy Jump Master
- 452212 Fishing Guide
- 452213 Hunting Guide
- 452214 Mountain or Glacier Guide
- 452215 Outdoor Adventure Instructor
- 452216 Trekking Guide
- 452217 Whitewater Rafting Guide
- 452299 Outdoor Adventure Guides nec
- 551211 Bookkeeper
- 552111 Bank Worker
- 552211 Credit or Loans Officer
- 711211 Industrial Spraypainter
- 711311 Paper Products Machine Operator
- 711313 Sawmilling Operator
- 711611 Sewing Machinist
- 711711 Footwear Production Machine Operator
- 711712 Hide and Skin Processing Machine Operator
- 711713 Knitting Machine Operator
- 711714 Textile Dyeing and Finishing Machine Operator
- 711715 Weaving Machine Operator
- 711716 Yarn Carding and Spinning Machine Operator
- 711799 Textile and Footwear Production Machine Operators nec
- 712111 Crane, Hoist or Lift Operator
- 712916 Paper and Pulp Mill Operator
- 712921 Waste Water or Water Plant Operator
- 721112 Logging Plant Operator

- 721913 Paving Plant Operator
- 731311 Train Driver
- 821711 Construction Rigger
- 423313 Personal Care Assistant
- 452311 Diving Instructor (Open Water)
- 591212 Import-Export Clerk
- 599611 Insurance Investigator
- 599612 Insurance Loss Adjuster
- 423111 Aged or Disabled Carer
- 423312 Nursing Support Worker
- 712211 Driller
- 899911 Bicycle Mechanic