



2 December 2021

**IMMIGRATION NEW ZEALAND INSTRUCTIONS: Amendment Circular No. 2021-58**

**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 from the effective date.

**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](http://www.immigration.govt.nz).

## Description of changes

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***Y3.5 Applying for entry permission***

***Y3.30 People who may be granted entry permission: COVID-19***

***Y4.5 People who must be refused entry permission unless granted as an exception to instructions: general character concerns***

***Y4.10 Restrictions on the grant of a visa or entry permission to certain groups as designated by the United Nations Security Council***

***Y4.15 People who must be refused entry permission unless granted as an exception to instructions: circumstances and compliance concerns***

***Y4.20 People who must be refused entry permission unless granted as an exception to instructions: stowaways***

***Y4.45 Making a decision to grant entry permission as an exception to instructions***

***Y4.50 People who must be refused entry permission: (COVID-19)***

Changes have been made to entry permission immigration instructions, to ensure alignment with the Immigration Act 2009.

The amended instructions allow entry permission to be granted to resident visa holders who were granted their visa while outside New Zealand and are arriving in New Zealand for the first time while holding that visa, if the entry permission instructions in place when they applied for residence allowed entry by a person holding that resident visa. This has the effect of allowing entry by visa holders who applied for their resident visa before COVID-19 border restrictions were put in place in early 2020.

The amended instructions also allow entry to New Zealand by people granted a 2021 Resident Visa while they are outside of New Zealand.

**Appendix 1: Amendments to Residence and Temporary Entry instructions effective from 1 December 2021**

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### Y3.5 Applying for entry permission

- a. Any person who is applying for entry permission must comply with passenger responsibilities on arrival as prescribed in [Y2.1](#).
- b. It is the responsibility of the person applying for entry permission to:
  - i. ensure that all information, evidence, and submissions that they wish to have considered is provided when the application for entry permission is made; and
  - ii. inform the immigration officer of any relevant fact, including any material change in circumstances that has occurred between the grant of a visa and the application for entry permission on the basis of that visa, if that fact or change in circumstances may affect the decision on the application for entry permission.
- c. For the purposes of Y3.5 "material change in circumstances" means a change that may relate to the person applying for entry permission or another person included in the application for entry permission, or may relate to any matter relevant to the Immigration Act 2009, immigration regulations or instructions.

#### Y3.5.1 Considering an application for entry permission

- a. Immigration officers must consider the application for entry permission in accordance with:
  - i. the requirements of the Immigration Act 2009 and immigration regulations; and
  - ii. the **relevant** Border Entry instructions; and
  - iii. any relevant special direction.
- b. **When considering the application for entry permission, the relevant Border Entry instructions are:**
  - i. **If the applicant holds a residence class visa, the border entry instructions in force at the time the application for a visa was made.**
  - ii. **If the applicant holds a temporary entry class visas granted in accordance with restricted temporary entry instructions, the border entry instructions in force at the time the application for a visa was made.**
  - iii. **If the applicant holds a temporary entry class visa, the border entry instructions in force at the time the application for entry permission is made.**
- c. When considering an application for entry permission, an immigration officer is not obliged to seek any further information, evidence, or submissions. The officer may determine the application on the basis of information, evidence, and submissions:
  - i. provided by the applicant; or
  - ii. held by Immigration New Zealand.
- d. If the person applying for entry permission fails to meet the instructions, immigration officers may then consider all the circumstances to see if an exception to instructions to grant entry permission is justified.
- e. Y3.5.1(d) does not apply to [Y3.10\(a\)](#) or [Y4.1](#).

### Y3.30 People who may be granted entry permission: COVID-19

- a. Despite Y4.50(a), the following persons may be granted entry permission:
- i. Those New Zealand residence class visa holders listed in [Y3.10\(a\)](#)
  - ii. The partner, legal guardian or any dependent children of a New Zealand citizen or a New Zealand residence class visa holder listed at [Y3.10\(a\)](#) who:
    - o are travelling with that New Zealand citizen or residence class visa holder; or
    - o are ordinarily resident in New Zealand; or
    - o have a visa based on their relationship to the New Zealand citizen or residence class visa holder.
  - iii. Australian citizens or a person who holds a current permanent residence visa (including a resident return visa) issued by the Government of Australia, where New Zealand is their primary place of established residence.
  - iv. Diplomats accredited to New Zealand and currently resident in New Zealand.
  - v. New diplomatic and consular personnel filling established positions at a foreign mission or consular post in New Zealand.
  - vi. Other diplomatic and consular personnel authorised by the Minister of Foreign Affairs or their delegate where there is a compelling national interest.
  - vii. Holders of a resident visa granted under the COVID-19 Support residence instructions ([S5](#)).
  - viii. Persons who previously held their initial resident visa while in New Zealand, and are the holders of a second or subsequent resident visa granted offshore, and who are travelling to New Zealand for the first time as the holder of that visa.
  - ix. Positioning aircraft crew travelling to New Zealand as a passenger (other than a transit passenger) on a commercial aircraft for the purpose of leaving New Zealand as aircraft crew in the course of a scheduled international service.
  - x. A person who:
    - o has travelled to New Zealand directly from Australia, the Cook Islands or Niue; and
    - o travelled to New Zealand on a Quarantine-Free Travel flight (as defined in the COVID-19 Public Health Response (Air Border) Order (No 2) 2020); and
    - o on boarding the flight, has been present in either of the following for the specified 14-day period (as defined in the COVID-19 Public Health Response (Air Border) Order (No 2) 2020)
      - the Cook Islands or New Zealand (if travelling from the Cook Islands); or
      - Niue or New Zealand (if travelling from Niue); or
      - Australia or New Zealand (if travelling from Australia).
  - xi. A person who has travelled to New Zealand directly from Australia; and
    - o is the holder of a resident visa; or
    - o is the holder of a temporary visa who last departed from New Zealand on or after 6 April 2021; or
    - o is an Australian citizen or a person who holds a current permanent residence visa (including a resident return visa) issued by the Government of Australia who last departed from New Zealand on or after 6 April 2021; or
    - o the partner, parent or dependent child of:
      - a New Zealand citizen
      - the holder of a resident visa
      - the holder of a temporary visa who last departed from New Zealand on or after 6 April 2021
      - an Australian citizen or a person who holds a current permanent residence visa (including a resident return visa) issued by the Government of Australia who last departed from New Zealand on or after 6 April 2021
  - xii. Persons who were in Afghanistan on 15 August 2021 and who on 19 August 2021 held and continue to hold either a valid temporary entry class visa or a residence class visa which was granted when the person was offshore and the person is arriving in New Zealand for the first time.
  - xiii. A person who:
    - o is either:
      - The holder of a resident visa; or
      - An Australian citizen or a person who holds a current permanent residence visa (including a resident return visa) issued by the Government of Australia; and
    - o has travelled to New Zealand directly from Samoa, Vanuatu or Tonga; and
    - o travelled to New Zealand on a Quarantine-Free Travel flight (as defined in the COVID-19 Public Health Response (Air Border) Order (No 2) 2020); and on boarding the flight, has been present in either of the following for the specified 14-day period (as defined in the COVID-19 Public Health Response (Air Border) Order (No 2) 2020):
      - Samoa or New Zealand (if travelling from Samoa); or
      - Vanuatu or New Zealand (if travelling from Vanuatu); or

- Tonga or New Zealand (if travelling from Tonga); or
  - Tokelau, Samoa or New Zealand (if travelling from Tokelau).
- xiv. The holder of a resident visa granted while outside of New Zealand who:
- applied for that resident visa on or before 30 November 2021; and
  - is arriving in New Zealand for the first time as the holder of that visa; and
  - the entry permission instructions in effect on the date of the resident visa application allowed holders of that visa to travel to and enter New Zealand.
- xv. A person who applied for a resident visa on or after 1 December 2021 and was granted a resident visa while outside of New Zealand under the 2021 Resident Visa Category.

**Note:** For the purpose Y3.30(a)(xi), dependent child has the meaning given by section 4 of the Immigration Act 2009, and parent, in relation to a dependent child, means a person on whom the child is dependent.

- b. A person may be granted entry permission if they are the holder of a temporary entry class visa which either:
- i. was granted or varied under the COVID-19 Support Restricted Temporary Entry Instructions; or
  - ii. has a condition that the holder carries out a critical purpose while they are in New Zealand.

**Note:** A person who was granted a second or subsequent resident visa by special direction on 11 September 2020 (i.e a person who held a resident visa with travel conditions which expired between 2 February 2020 and 11 September 2020 and had previously been in New Zealand as a resident but were outside New Zealand on 11 September 2020), is considered to hold a second or subsequent resident visa for the purposes of Y3.30(a)(viii). Quarantine-Free Travel is provided for by orders under the Covid-19 Public Health Response Act 2020. The COVID-19 Public Health Response (Air Border) Order (No 2) 2020 defines Quarantine-Free Travel (QFT) places, ports, carriers and persons. QFT is currently only possible for people arriving by the air border as part of a scheduled international service in accordance with the Air Border Order. Anyone arriving by private aircraft or by the maritime border are still subject to the border restrictions.

In the Air Border Order, the specified 14-day period means the period that:

- (a) starts at the beginning of the 14th day before the day on which the person boards the aircraft undertaking the QFT flight concerned, and
- (b) ends when the person boards the aircraft.

#### Y4.5 People who must be refused entry permission unless granted as an exception to instructions: general character concerns

*See also Immigration Act 2009 ss 22 and 107*

- a. Entry permission must be refused to any person, except a person listed in [Y3.10\(a\)](#), who is not otherwise dealt with under [Y4.1](#) and;
  - i. is arrested on arrival in New Zealand; or
  - ii. possesses a forged, fraudulent, or improperly-altered identity document or other official document; or
  - iii. possesses a controlled drug (as defined in s 2 of the Misuse of Drugs Act 1975) without proper authority; or
  - iv. possesses a prohibited import (as defined in s 5 of the Customs and Excise Act 2018) without proper authority.

**Note:** A person should be dealt with under [Y4.1](#) if, on arrival, the person possesses a controlled drug in an amount, level, or quantity at or over which the controlled drug is presumed to be for supply (as per s 2(1A) of the Misuse of Drugs Act 1975).

#### **Y4.10 Restrictions on the grant of a visa or entry permission to certain groups as designated by the United Nations Security Council**

- a. Entry permission must be refused to any person, except a person listed in [Y3.10\(a\)](#), who is a designated individual or specified entity; and is not otherwise dealt with under [Y4.1](#).
- b. A designated individual or a specified entity means someone who is named on a list of such persons held by Immigration New Zealand and includes:
  - i. designated individuals from the Democratic People's Republic of Korea (DPRK), and:
    - o their immediate family members, and
    - o an individual (whether or not a DPRK national) acting on the behalf or under the direction of a designated individual, and
    - o an individual (whether or not a DPRK national) assisting in the evasion or violation of the measures set out in the UN resolutions listed in section 3 of the United Nations Sanctions (Democratic People's Republic of Korea) Regulations 2017
  - ii. designated individuals and specified entities from Al-Qaida and Taliban
  - iii. designated individuals from Iran
  - iv. designated individuals from Lebanon
  - v. designated individuals from the Democratic Republic of Congo
  - vi. designated individuals from Sudan
  - vii. designated individuals from Somalia
  - viii. designated individuals from Eritrea
  - ix. designated individuals from Libya
  - x. designated individuals from Mali
  - xi. designated individuals from Guinea-Bissau
  - xii. designated individuals from Central African Republic
  - xiii. designated individuals from Yemen
  - xiv. designated individuals from South Sudan.
- c. Immigration officers must contact the Ministry of Foreign Affairs and Trade when processing application for entry permission or a visa from a person to whom (b) above applies
- d. A visa or entry permission may only be granted to a person to whom (b) above applies **on the advice of the Secretary of Foreign Affairs and Trade.**



#### Y4.15 People who must be refused entry permission unless granted as an exception to instructions: circumstances and compliance concerns

See also *Immigration Act 2009* ss 22 and 107.

- a. Entry permission must be refused to any person, except a person listed in [Y3.10\(a\)](#), who is not otherwise dealt with under [Y4.1](#) and:
  - i. makes a false declaration on any part of the New Zealand Passenger Arrival Card or Crew Declaration, whether that declaration relates to an immigration matter or not; or
  - ii. fails to comply with an immigration, customs, biosecurity, or Police responsibility on arrival, including (but not limited to) failing to:
    - o apply for a visa, if a visa waiver applies; and entry permission; or
    - o produce an arrival card; or
    - o produce a passport or certificate of identity; or
    - o produce other immigration documentation required by an immigration officer; or
    - o comply with any other direction or request by immigration, customs, or biosecurity, or Police.

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**Note:** Immigration Officers may consult with Customs, Biosecurity, or Police Officers as necessary.

## Y4.20 People who must be refused entry permission unless granted as an exception to instructions: stowaways

See also *Immigration Act 2009 ss 101, 115, 116*.

- a. Entry permission must be refused to any person who is a stowaway and is not otherwise dealt with under [Y4.1](#).
- b. A stowaway:
  - i. is a person who is carried in or on a craft without the consent of the carrier, or the person in charge, of the craft; and
  - ii. is unlawfully in New Zealand; and
  - iii. does not have any rights of appeal on humanitarian grounds so long as section 115 of the Immigration Act 2009 applies to the person; and
  - iv. is liable to be arrested and detained under Part 9 of the Immigration Act 2009; and
  - v. is liable for turnaround.
- c. The carrier and the person in charge of a craft must report the presence of a stowaway on board the craft as soon as practicable (see [Y2.20\(a\)](#)). In most cases the ship's agent will have informed New Zealand Customs Service (Customs) or Immigration New Zealand well in advance of the craft's arrival.
- d. If there are reasonable grounds for believing that there are stowaways or other people intent on avoiding arrival procedures on board a craft, members of the New Zealand Police (Police) and Customs officers undertaking immigration duties have powers under the Immigration Act 2009 to enter and search that craft (see [Y3.25](#)).
- e. Action to deal with stowaways may begin as soon as the craft on which they are travelling crosses into New Zealand's territorial limits. The territorial limit is any point 12 miles seaward from the New Zealand shore or baseline, as defined by the Territorial Sea and Exclusive Economic Zone Act 1977.
- f. Stowaways must be arrested and detained within 72 hours of the person first reporting or presenting to an immigration officer (see [D4.25](#)). After 72 hours have passed stowaways can only be dealt with by way of deportation.

## Y4.50 People who must be refused entry permission: (COVID-19)

See also *Immigration Act 2009* ss 22, 107, 108 and 109.

- a. Entry permission must be refused to any person, except a person listed in [Y3.30 \(a\)](#), who is not otherwise dealt with under [Y4.1](#) and who is:
  - i. the holder of a temporary entry class visa (except as provided for by [Y3.30 \(b\)](#))
  - ii. a person described under Schedule 2 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (visa-waiver travellers).
- b. A person subject to (a) above may still be granted entry permission by an immigration officer, or by the Minister of Immigration, as an exception to instructions under s 108(9) or s109(7) of the Immigration Act 2009.

### Notes:

For the avoidance of doubt:

- New Zealand citizens are not subject to this instruction
- People subject to regulation 25 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 are deemed to be granted entry permission
- Australians who are issued with an invitation to apply under S5.10 or S5.15 for a resident visa on arrival in New Zealand are not subject to this instruction

## **Appendix 2: Amendments to Residence and Temporary Entry instructions rescinded from 1 December 2021**

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The following instructions have been rescinded, and as such are not highlighted.

#### **Y4.45 Making a decision to grant entry permission as an exception to instructions**

- a. An immigration officer must attempt to interview a person before deciding to grant entry permission as an exception to instructions.
- b. The immigration officer must have regard to the principles of fairness and natural justice (see [A1](#)).
- c. When making the decision, an immigration officer must consider all of the surrounding circumstances, including factors both for and against the grant of entry permission such as:
  - i. whether the person has compelling and genuine reasons to enter New Zealand; and
  - ii. whether the person can take any action to meet the requirements for a visa and/or entry permission; and
  - iii. whether there is any other impediment to the grant of a visa and entry permission.
- d. An immigration officer must record reasons for the decision to grant entry permission as an exception to instruction and enter those reasons into the Ministry's records.