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D1 Compliance - Objective

The objective of Compliance instructions is to maintain the integrity of New Zealand's immigration law and other immigration requirements. This is achieved by ensuring that breaches of New Zealand's immigration laws and immigration instructions are detected and dealt with in accordance with those laws and instructions, utilising any appropriate enforcement tools in order to encourage compliance, including prosecution.

Effective 29/11/2010
D2 Deportation
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D2.1 Objective

The objective of these Deportation Instructions is to specify how people may become liable for deportation, the meaning and consequences of liability, any rights of appeal against deportation and how deportation will be executed. The deportation processes set out in these instructions maintain the integrity of New Zealand’s immigration laws and ensure that breaches are detected and dealt with appropriately.

These instructions detail the integrated liability for deportation and the deportation regime under the Immigration Act 2009 which takes the place of the revocation of a permit, removal and deportation under the Immigration Act 1987.

There are transitional instructions which provide for the circumstances where provisions of the Immigration Act 1987 relating to revocation, removal or deportation will still apply after implementation of the Immigration Act 2009.

Effective 29/11/2010
D2.5 Liability for deportation

Liability for deportation may arise as a consequence of a variety of acts or omissions. These instructions specify:

- when a person is liable for deportation,
- how that liability will be communicated,
- the consequences of the liability, and
- where appeal rights exist in respect of that liability.

D2.5.1 Decision making

a The Minister of Immigration (the Minister) has the authority to decide to make a person liable for deportation. Generally the Minister will delegate this authority:

i in the case of residence class visa holders, to delegated decision makers within Immigration New Zealand. The liability for deportation process for residence class visa holders will be administered by the Deportation team within the Resolutions team at Immigration New Zealand National Office.

ii in the case of temporary entry class visa holders, the process will be administered by the Compliance Operations Branch.

b The Minister cannot delegate the authority to make decisions under section 163 of the Immigration Act 2009 which applies to people who are a threat or risk to security.

c Under the Immigration Act 2009, immigration officers and the New Zealand Police have powers permitting them to locate and investigate persons unlawfully in New Zealand or otherwise liable for deportation. Information about these powers of investigation are detailed in section D5 identifying and locating people suspected of being in New Zealand unlawfully or who may be otherwise liable for deportation.

Effective 29/11/2010
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)

a 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.

b 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.

Effective 28/08/2017
D2.15 Deportation liability: other grounds

See previous instructions
D2.15 Effective 19/06/2017
D2.15 Effective 30/07/2012
D2.15 Effective 29/11/2010

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. 

   The Governor-General may, by Order in Council, revoke that order. 

Effective 28/08/2017
D2.20 Limitations on deportation

See also Immigration Act 2009 ss 164, 166

a No person who is recognised as a refugee or a protected person, nor a claimant, may be deported under the Immigration Act 2009, although:

i A refugee or a claimant for recognition as a refugee may be deported but only if Article 32.1 or 33 of the Refugee Convention allows the deportation of the person.

ii A protected person may be deported to any place other than a place where there are substantial grounds for believing that the person would be in danger of being subjected to:
   o torture (as defined in section 130(5) of the Immigration Act 2009); or
   o arbitrary deprivation of life or cruel treatment (as defined in section 131(6) of the Immigration Act 2009).

b No person who is for the time being entitled to any immunity from jurisdiction by or under the Diplomatic Privileges and Immunities Act 1968 (other than a person referred to in section 10D(2)(d) of that Act) or the Consular Privileges and Immunities Act 1971 may be deported under the Act.

D2.20.1 No deportation liability if deportation prohibited under Immigration Act 1987, Transitional provisions

See also Immigration Act 2009 s 437

Nobody may be deported under the Immigration Act 2009 if their deportation was prohibited under section 93 of the Immigration Act 1987.

Effective 29/11/2010
D2.25 Identifying and locating people suspected of being liable for deportation

See previous instructions:
D2.25 Effective 02/12/2012
D2.25 Effective 03/09/2012
D2.25 Effective 07/11/2011
D2.25 Effective 29/11/2010

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;
xii real estate agents; and
xii in relation to a person whose location is being sought, the person’s employer or former employer.

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 dwelling house.

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
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:

- whether the person is entitled to work in New Zealand; and
- whether the person is complying with the work-related conditions of his or her visa (if any); and
- any documentary or other evidence of the person’s identity; and
- the person’s passport or certificate of identity (whether or not it also relates to any other person);

iv require anyone at the premises who has access to copying facilities to provide copies of any documents or things produced 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;
   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:
      o has failed to produce or surrender the identity document when required to do so under D2.25.35 or D2.25.40; or
      o 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:
  o the place (which may include a vehicle) where the person is currently located; or
  o the person’s abode; or
  o 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: a.

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.

Effective 28/08/2017
D2.30 Period of deportation liability

See previous instruction:
D2.30 Effective 30/07/2012
D2.30 Effective 29/11/2010

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.

Effective 28/08/2017
D2.31 Deportation liability notice

See previous instructions
D2.31 Effective 03/09/2012
D2.31 Effective 30/07/2012

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.

Effective 28/08/2017
D2.32 Contents of deportation liability notice

See also Immigration Act 2009 s 171

A deportation liability notice must be signed by the Minister or an immigration officer and state:

a. the provision or provisions of the Immigration Act 2009 under which liability for deportation arose;

b. the ground or grounds on which liability for deportation arose;

c. if applicable, the right to give good reason, not later than 14 days after the date of service of the notice, as to why deportation should not proceed, and who that reason must be given to;

d. whether there is a right of appeal against liability for deportation and, if so:
   i. what it is;
   ii. how to exercise the right of appeal;
   iii. the time limit for lodging the appeal;

e. the length or period of prohibition on entry to New Zealand that the person named in the notice may become subject to;

f. the consequences of attempting to return to New Zealand during the prohibition;

g. the requirement to repay any costs to the Crown of deportation;

h. if applicable, that a refugee and protection officer has determined that deportation of the person is not prohibited under section 164 of the Immigration Act 2009; and

i. if applicable, the grounds on which liability for deportation has been reactivated under section 172(3) or 212(3) of the Immigration Act 2009.

Effective 30/07/2012
D2.35 Cancellation or suspension of deportation liability

See previous instruction:
D2.35 Effective 29/11/2010

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.

Effective 28/08/2017
D2.40 Deportation

See previous instructions
D2.40 Effective 03/09/2012
D2.40 Effective 25/07/2011
D2.40 Effective 29/11/2010

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 determination of the appeal;

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.
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.

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 deportation order may be executed once it has been served on the person subject to the order.

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.

Effective 28/08/2017
D2.45 Prohibition on entry

See previous instructions
D2.45 Effective 25/07/2011
D2.45 Effective 29/11/2010

See also Immigration Act 2009 s 179

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:

<table>
<thead>
<tr>
<th>Why person deported</th>
<th>Period of prohibition on entry (from date of deportation)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 155 of the Immigration Act 2009 applies (granted a visa as the result of an administrative error and visa not cancelled)</td>
<td>none</td>
</tr>
<tr>
<td>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</td>
<td>2 years</td>
</tr>
<tr>
<td>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</td>
<td>5 years</td>
</tr>
<tr>
<td>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</td>
<td>5 years</td>
</tr>
<tr>
<td>Section 157 of the Immigration Act 2009 applies (sufficient reasons for temporary entry class visa holder to be deported)</td>
<td>5 years</td>
</tr>
<tr>
<td>Section 159 of the Immigration Act 2009 applies (breached resident visa conditions)</td>
<td>5 years</td>
</tr>
<tr>
<td>Section 156 of the Immigration Act 2009 applies (visa granted on basis of false identity)</td>
<td>Permanent prohibition</td>
</tr>
<tr>
<td>Section 158 of the Immigration Act 2009 applies (fraud, forgery, etc in relation to an application)</td>
<td>Permanent prohibition</td>
</tr>
<tr>
<td>Section 160 of the Immigration Act 2009 applies (new information as to character becomes available)</td>
<td>Permanent prohibition</td>
</tr>
<tr>
<td>Section 162 of the Immigration Act 2009 applies (refugee or protection status cancelled for fraud, forgery, etc)</td>
<td>Permanent prohibition</td>
</tr>
<tr>
<td>Section 161 of the Immigration Act 2009 applies (residence class visa holder convicted of specified offence)</td>
<td>Permanent prohibition</td>
</tr>
<tr>
<td>Section 163 of the Immigration Act 2009 applies (certified as person constituting threat or risk to security)</td>
<td>Permanent prohibition</td>
</tr>
</tbody>
</table>

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.
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.

Effective 28/08/2017
D2.50 Transitional instructions

D2.50.1 Revocation of temporary permit on grounds of administrative error if granted prior to commencement of the Immigration Act 2009

See also Immigration Act 2009 s 433

a This section applies to a temporary permit that was granted under the Immigration Act 1987 as a result of an administrative error.

b An administrative error in granting a temporary permit occurs if:
   i it was granted to a New Zealand citizen or a person who was exempt under the Immigration Act 1987 from the requirement to hold a permit; or
   ii it was granted to a person to whom section 7 of the Immigration Act 1987 applied; or
   iii the person granting it intended to grant a temporary permit of some type rather than the one that was actually granted; or
   iv it was granted in contravention of any special direction, or any instruction of a kind referred to in section 130(5) of the Immigration Act 1987; or
   v it was granted contrary to Government policy applying at the time; or
   vi it was granted for a period longer than that prescribed for permits of that type by regulations made under the 1987 Act; or
   vii it was granted on the basis of an administrative error in determining an earlier application for a visa or permit.

c If an immigration officer determines, whether before or after the Immigration Act 1987 is repealed that the permit was granted as a result of an administrative error and the permit was not revoked in the issuing office of the Department or in the arrival hall at the Customs place or immigration control area, the immigration officer may, in their absolute discretion, instead of determining that the person is liable for deportation under section 155 of the Immigration Act 2009.
   i offer the person a visa of an appropriate class and type, and subject to the appropriate conditions; and
   ii if the person agrees, grant the visa.

d If the person is still in the issuing office or arrival hall at the Customs place or immigration control area an immigration officer may cancel the permit (being the equivalent visa deemed held under section 415 of the Immigration Act 2009) under section 67 of the Immigration Act 2009 as if it were granted under the Immigration Act 2009, and the Immigration Act 2009 will apply accordingly with any necessary modifications.

D2.50.5 Revocation of permits, removal orders, and deportation orders

See also Immigration Act 2009 s 432

a The Immigration Act 1987 continues to apply after the repeal of the Immigration Act 1987 in relation to a person:
   i whose visa or permit had been revoked by the Minister of Immigration or an immigration officer under the Immigration Act 1987, whether or not notice of the revocation had been served on the person; or
   ii who is subject to a removal order under the Immigration Act 1987; or
   iii who is subject to a deportation order under the Immigration Act 1987.

b If the person had lodged an appeal to an appeals body other than the (Refugee Status Appeals Authority (RSAA) under the Immigration Act 1987 but the appeal had not been determined then the appeal will be completed in accordance with provisions of section 446 of the Immigration Act 2009.

c If the person was eligible to appeal to an appeals body other than the RSAA under the Immigration Act 1987 but had not done so then the provisions of section 447 of the Immigration Act 2009 apply.
If a person to whom (a)(ii) or (iii) above applies does not lodge an appeal or is unsuccessful on appeal, they may be removed or deported and

i. the removal or deportation must be effected as if it were a deportation being executed under the immigration Act 2009, and that Act applies accordingly with any necessary modifications; and

ii. the person is liable for arrest and detention under Part 9 of the Immigration Act 2009 pending his or her deportation being executed.

**D2.50.15 Removal action - transitional provisions**

*See also Immigration Act 2009 ss 407, 432*

a. A person who is subject to a removal order under the Immigration Act 1987 remains subject to that removal order after the repeal of the Immigration Act 1987. The provisions of the Immigration Act 1987 continue to apply in respect of that person.

b. A person who is subject to a removal order may be removed from New Zealand, and continues to be able to be removed in accordance with the relevant provisions of the Immigration Act 1987 regarding removal after the repeal of the Immigration Act 1987.

c. Immigration officers have the discretion to effect removal by having a person liable for removal:

i. taken into custody by a constable; or

ii. monitoring the person’s departure without having them taken into custody.

d. Officers need to assess the most appropriate means of removal after having taken into account all the circumstances of the case.

**D2.50.20 Who remains liable for removal from New Zealand after the repeal of the Immigration Act 1987?**

*See also Immigration Act 1987 ss 4A, 27A(2), 47, 53, 63, 114K(4)(b), 115A, 116 and Immigration Act 2009 s 154*

A person who is in New Zealand unlawfully and is the subject of a removal order is liable to be removed from New Zealand.

**D2.50.25 Liability for deportation in respect of visa deemed to be held under section 415 or 417 of the Immigration Act 2009**

*See also Immigration Act 2009 s 434*

a. A person may become liable for deportation under Part 6 of the Immigration Act 2009 in respect of a visa deemed to be held by the person under section 415 or 417 of the Immigration Act 2009 whether the reason for the liability arose before or after the person was deemed to hold the visa.

b. For the purposes of (a) above any time periods specified in the Immigration Act 2009 that relate to liability for deportation must be calculated including any time that has elapsed before the repeal of the Immigration Act 1987 during which the person held the permit or visa, or was subject to the exemption, that corresponds with the visa deemed to be held under the Immigration Act 2009.

**D2.50.30 Currency of removal orders issued under the Immigration Act 1987**

*See also Immigration Act 1987 s 57*

a. A removal order remains in force from the time at which it is served until 5 years have expired after the date the subject of the order is removed from New Zealand, unless it is cancelled before then (see D2.50.35) or (b) below applies.

b. If the subject of a removal order is under 17 years of age on the date that the order is made, the order only remains in force until they are removed from New Zealand.

D2.50.35 Cancellation of a removal order issued under the Immigration Act 1987

See also Immigration Act 1987 ss 35A, 58
See also Immigration Act 2009 s 61

a A removal order may be cancelled if:
   i it was issued in error; or
   ii an immigration officer considers that, in all the circumstances, it is appropriate to grant a visa under section 61 of the Immigration Act 2009.

b Immigration officers who were designated to make removal orders under the Immigration Act 1987 immediately before the repeal of the Immigration Act 1987 may, while the subject of a removal order is still in New Zealand, cancel the removal order by endorsing a copy of the removal order accordingly and personally serving that copy of the order on the person named in it.

c The cancellation endorsement has the effect of directing anyone who is detaining the person named in the order as a result of the removal order, to immediately release the person from custody. The immigration officer who cancels the order must ensure that the person is released immediately.

d If a person has already left New Zealand or been removed from New Zealand an immigration officer who is designated to make removal orders as detailed in (b) above may cancel the removal order by advising (on Form 6 of the Schedule, Immigration (Certificate, Warrant, and Other Forms) Regulations 2010) the person named in a removal order, that the order is cancelled.

D2.50.40 Cancellation of removal order issued under the Immigration Act 1987 and the consideration of a person's rights

See also Immigration Act 2009 s 476

a No person has the right to apply to an immigration officer for the cancellation of a removal order issued under the Immigration Act 1987. However, an immigration officer must consider cancelling the removal order of a person who is in New Zealand if the person provides information to the immigration officer concerning his or her personal circumstances, and the information is relevant to New Zealand's international obligations.

b If an immigration officer does consider cancelling a removal order, 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 47(3) of the Immigration Act 1987; or
      o to inquire into the circumstances of, or to make any further inquiries in respect of the information provided by or in respect of, the person who is the subject of the removal order or any other person.

c Whether or not an immigration officer considers cancelling a removal order:
   i he or she is not obliged to give reasons for any decision, other than the reason that this subsection applies; and
   ii section 23 of the Official Information Act 1982 does not apply in respect of the decision.

d 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.
D2.50.45 Executing a removal order under the Immigration Act 1987
See also Immigration Act 1987 s 59
See also Immigration Act 2009 ss 439, 313,

a A person subject to a removal order is liable for arrest and detention under Part 9 of the Immigration Act 2009.

b A removal order is executed by placing a person named in the order on a craft leaving New Zealand.

c For the purpose of executing the order, any member of the New Zealand Police (Police) may arrest (without warrant) and detain, a person on whom a removal order has been served under section 313 of the Immigration Act 2009.

d The person may be detained for up to 96 hours to await being placed on the craft.

e Once the person has been placed on the craft, the Police may continue to detain them there to ensure that they do not leave the craft before its departure.

D2.50.50 Executing a removal order on an unmarried person under the age of 18
See also Immigration Act 1987 ss 59, 141B, 141D
See also Immigration Act 2009 s 375

a If an unmarried person under the age of 18 is to be deported from New Zealand and a parent or guardian is not accompanying them, immigration officers must:

i make all reasonable efforts to contact their parent or guardian to agree on suitable travelling arrangements for them; and

ii have nominated a responsible adult; and

iii give the minor opportunity to express their views (whether personally, or through a responsible adult) and give due weight to those views.

b Immigration officers must make travel arrangements for the person in consultation with:

i the nominated responsible adult for the person (see D5.1); or

ii if consultation with the nominated responsible adult is not possible or practicable, with the Director-General of Social Welfare.

Effective 18/04/2014
D3 Appeals against liability for deportation
IN THIS SECTION

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D3.1 Immigration and Protection Tribunal

The Immigration and Protection Tribunal (Tribunal) has been established under the Immigration Act 2009 to consider appeals against decisions made under that Act, liability for deportation, applications by refugee and protection officers and by the Minister, and to deal with transitional matters arising from the repeal of the 1987 Act.

Effective 29/11/2010
D3.5 Appeals to the Tribunal against liability for deportation

People who are or who are made liable for deportation may have a right of appeal to the Tribunal.

Effective 29/11/2010
D3.10 No right of appeal for holders of limited visas

The holder of a limited visa has no right of appeal to the Tribunal either:

a  during the period that they are the holder of the visa; or

b  after the limited visa expires, if they have not been granted a visa of another class or type.

Effective 29/11/2010
D3.15 Deportation liability if person unlawfully in New Zealand
See also Immigration Act 2009 s 154(4)
A person who is unlawfully in New Zealand may appeal to the Tribunal on humanitarian grounds against liability for deportation, no later than 42 days after first becoming unlawful.
If the person becomes unlawfully in New Zealand following an unsuccessful reconsideration of the decline of a temporary visa application, the person may, not later than 42 days after the later of:
a the day on which the person became unlawful; or
b the day on which the person received confirmation of the decision to decline the application,
appeal on humanitarian grounds against their liability for deportation.

Effective 29/11/2010
D3.20 Deportation liability if person’s visa granted in error

See also Immigration Act 2009 s 155

a  The holder of a temporary or interim visa has 14 days from the date of service of a deportation liability notice to give good reason why they should not be deported.

b  Subsection (a) above does not apply if:
   i  the person is a holder of a limited visa;
   ii the Minister or an Immigration Officer determines that the person is an excluded person.

c  A person whose visa is cancelled as a result of an administrative error may appeal to the Tribunal not later than 28 days after the date of service of a deportation liability notice, appeal against liability:
   i  if a residence class visa held, on the facts and on humanitarian grounds; or
   ii if a temporary or interim visa held, on humanitarian grounds only.

Effective 29/11/2010
D3.25 Deportation liability if visa held under false identity

See also Immigration Act 2009 s 156

A person who is liable for deportation under section 156 of the Immigration Act 2009 may appeal to the Tribunal:

a  If the visa was a temporary or interim visa:
   i  on humanitarian grounds not later than 42 days of first becoming unlawfully in New Zealand; and
   ii If it was the Minister who determined that the visa was held under a false identity the person has 14 days from the date of service of a deportation liability notice to give good reason why they should not be deported.

b  If a residence class visa:
   i  on humanitarian grounds not later than 42 days after first becoming unlawfully in New Zealand; and
   ii if it was the Minister who determined that the visa was held under a false identity, the person may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal on the facts against liability.

Effective 29/11/2010
D3.30 Deportation liability of temporary entry class visa holder for cause

See also Immigration Act 2009 s 157

a A person who is liable for deportation under section 157 of the Immigration Act 2009 has 14 days from the date of service of the deportation liability notice to give good reason why deportation should not proceed.

b Subsection (a) above does not apply if:
   i the person is a holder of a limited visa;
   ii the Minister or an Immigration Officer determines that the person is an excluded person.

c The person may, not later than 28 days after the date of service of the Deportation Liability Notice, appeal to the Tribunal on humanitarian grounds against their liability for deportation.

Effective 29/11/2010
D3.35 Deportation liability of residence class visa holder if visa or citizenship obtained or held by fraud, forgery, etc

See also Immigration Act 2009 s 158

A person liable for deportation under section 158 of the Immigration Act 2009 may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal

a If the person was convicted of an offence where it is established that the person’s residence class visa or entry permission was procured, or was granted on the basis of a visa procured, through fraud, forgery, false or misleading representation, or concealment of relevant information - on humanitarian grounds only.

b If it is determined by the Minister that the person’s residence visa class or entry permission was procured, or was granted on the basis of a visa procured, through fraud, forgery, false or misleading representation, or concealment of relevant information - on the facts and humanitarian grounds.

c If the person is deemed to hold a resident visa, and the person was deprived of citizenship – on humanitarian grounds only.

Effective 29/11/2010
D3.40 Deportation liability of resident if visa conditions breached

See also Immigration Act 2009 s 159

A person liable for deportation under section 159 of the Immigration Act 2009 may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal both on the facts and on humanitarian grounds.

Effective 29/11/2010
D3.45 Deportation liability of residence class visa holder if new information as to character becomes available

See also Immigration Act 2009 s 160

A person liable for deportation under section 160 of the Immigration Act 2009 may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal both on the facts and on humanitarian grounds.

Effective 29/11/2010
D3.50 Deportation liability of residence class visa holder convicted of criminal offence

See also Immigration Act 2009 s 161

A person liable for deportation under section 161 of the Immigration Act 2009 may, not later than 28 days after being served with a deportation liability notice, appeal to the Tribunal:

a. on humanitarian grounds; and

b. 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.

Effective 29/11/2010
D3.55 Deportation liability if refugee or protection status cancelled under section 146 of the Immigration Act 2009

See also Immigration Act 2009 s 162

A person liable for deportation under section 162 of the Immigration Act 2009 may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal against his or her liability for deportation:

a on humanitarian grounds only, if the person has been convicted of an offence where it is established that he or she acquired recognition as a refugee or a protected person by fraud, forgery, false or misleading representation, or concealment of relevant information; or

b on the facts and on humanitarian grounds, in any other case.

Effective 29/11/2010
D3.60 Definition of Appeal on Humanitarian Grounds

‘Appeal on humanitarian grounds’ means an appeal to the Tribunal against liability for deportation on the grounds set out in section 207 of the Immigration Act 2009.

Effective 29/11/2010
D3.65 Grounds for determining a humanitarian appeal

See also Immigration Act 2009 s 207

The Tribunal must allow an appeal against liability for deportation on humanitarian grounds only where it is satisfied that:

a there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and

b it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.

'received confirmation' unsuccessful temporary visa application reconsideration section 386(5) If under this Act any notice or other document is to be given to, served on, or supplied to the holder of any temporary entry class visa, or any person who is, or is believed to be, unlawfully in New Zealand, by registered post addressed to that person’s New Zealand address, the notice or other document is treated as having been given to, served on, or received by the person 7 days after the date on which it was posted.

Effective 29/11/2010
D3.70 When a temporary entry class visa holder gives reasons why deportation should not proceed

See also Immigration Act 2009 ss 155, 156, 157

a If a temporary entry class visa holder has the right to give good reason as to why his or her deportation should not proceed, and wishes to exercise that right, this should be done in writing, by the person or their authorised representative, to the address given in the deportation liability notice. Any such written submission must be received by Immigration New Zealand within 14 calendar days of the date of service of the deportation liability notice.

b In their written submission, the person should:
   i give an address for communication, and
   ii set out all the circumstances they would like taken into account.

c An immigration officer is not obliged to seek further information from the person or any other source when considering the written submission.

d If a person makes a written submission about the reasons why deportation should not proceed, this submission must be taken into account when considering whether to cancel the person’s liability for deportation. This consideration must be done by a different immigration officer than the immigration officer who served the deportation liability notice. The officer must also take into account the objective of Compliance instructions (see D1).

e The person will be notified in writing about the officer’s decision whether or not to cancel deportation liability as soon as reasonably practicable. The officer will be mindful of the period for a person to make an appeal on humanitarian grounds to the Immigration and Protection Tribunal (where applicable).

f The officer must inform the person:
   i that any written submissions put forward by the person were taken into account; and
   ii whether or not the decision that the person is liable for deportation has changed.

g Nothing prevents a person with appeal rights from lodging an appeal with the Immigration and Protection Tribunal against their liability for deportation before providing a written submission to Immigration New Zealand or following the provision of a written submission but before Immigration New Zealand’s decision is made. It is the person’s responsibility to ensure that such an appeal to the Immigration and Protection Tribunal is submitted within time (as specified in their deportation liability notice). The period for doing so will not be affected by the fact they have made a written submission to Immigration New Zealand about not proceeding with deportation

Effective 30/07/2012
D4 Arrest and detention
IN THIS SECTION

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D4.1 Persons liable to arrest and detention

See also Immigration Act 2009 s 309

a The following persons are liable to arrest and detention under Part 9 of the Immigration Act 2009:
   i persons who are liable for turnaround; or
   ii persons who are liable for deportation (including persons recognised as refugees or protected persons but whose deportation is not prohibited under section 164 of the Immigration Act 2009); or
   iii persons who are suspected by an immigration officer or a constable to be liable for deportation or turnaround and who fail to supply satisfactory evidence of their identity when requested under section 280 of the Immigration Act 2009; or
   iv persons who are, on reasonable grounds, suspected by an immigration officer or a constable of constituting a threat or risk to security.

b The following persons are not liable to arrest and detention under Part 9 of the Immigration Act 2009:
   i persons who are recognised as refugees, except those whose deportation is allowed under section 164(3) of the Immigration Act 2009; or
   ii persons who are recognised as protected persons, except those whose deportation is allowed under section 164(4) the Immigration Act 2009.

Effective 29/11/2010
D4.5 Purpose for which arrest and detention powers may be exercised

See also Immigration Act 2009 s 310

The powers of arrest and detention under Part 9 of the Immigration Act 2009 may be exercised for the following purposes:

a in the case of a person liable for turnaround, to detain the person in order to place him or her on the first available craft leaving New Zealand; or

b in the case of a person liable for deportation:
   i to detain the person pending the making of a deportation order, including during the completion of any appeal brought by the person against his or her liability for deportation; or
   ii to deport the person following the making of a deportation order by placing him or her on the first available craft leaving New Zealand; or

c in the case of a person who is suspected by an immigration officer or a constable to be liable for deportation or turnaround and who fails to supply satisfactory evidence of his or her identity when requested under section 280 of the Immigration Act 2009, to detain the person pending satisfactory establishment of the person's identity; or

d in the case of a person:
   i who is suspected of constituting a threat or risk to security, to detain the person pending the making of a deportation order; or
   ii who is subject to a deportation order under section 163 of the Immigration Act 2009, to deport the person by placing him or her on the first available craft leaving New Zealand; or

e in the case of a person who has breached residence and reporting requirements agreed under section 315 of the Immigration Act 2009 or conditions imposed under section 320 of the Immigration Act 2009, to detain the person pending a determination by a District Court Judge under sections 317, 318, or 320 of the Immigration Act 2009.

Effective 29/11/2010
D4.10 Implications of liability to arrest and detention

See previous instructions D4.10 Effective 29/11/2010

See also Immigration Act 2009 s 311

Where a person is liable to arrest and detention under Part 9 of the Immigration Act 2009:

a  the person may be subject to the 4-hour limited detention by an immigration officer provided for in section 312 of the Immigration Act 2009; or

b  the person may be arrested and detained without warrant for a period not exceeding 96 hours by a constable in accordance with section 313 of the Immigration Act 2009; or

c  an immigration officer may agree to residence and reporting requirements with the person in accordance with section 315 of the Immigration Act 2009; or

d  the person may be detained in custody under a warrant of commitment issued under section 317 or 318 of the Immigration Act 2009; or

e  the person may be released on conditions under section 320 of the Immigration Act 2009.

Effective 03/09/2012
D4.11 Limited power of detention for up to 4 hours

See also Immigration Act 2009 s 312

A person liable to arrest and detention under Part 9 of the Immigration Act 2009 (the Act) may be detained by an immigration officer authorised under section 388(2) of the Act (see A15.1.20) for a purpose set out in section 310 of the Act until the earliest of:

a  the exercise by a constable of the power of arrest and detention under section 313 of the Act; or
b  the delivery of the person into custody under the Act; or
c  the person no longer being liable to arrest and detention under Part 9 of the Act; or
d  the purpose of the detention being achieved; or
e  the elapsing of 4 hours since the detention commenced.

Effective 03/09/2012
D4.12 Duties of detaining officers

See also Immigration Act 2009 s 327

a When detaining any person under section 312 of the Immigration Act 2009, it is an immigration officer’s duty to:
   i inform the person at the time of the detention of the reason for the detention (unless in all the circumstances it is impracticable to do so); and
   ii produce the officer’s warrant; and
   iii inform the person that he or she may contact a lawyer or if appropriate, a responsible adult (see D4.35); and
   iv inform the person of the maximum duration of the detention.

b When arresting and detaining any person without warrant under section 313 of the Immigration Act 2009, it is a constable’s duty to:
   i inform the person at the time of the arrest, unless in all the circumstances it is impracticable to do so, of the reason for the arrest, and that the arrest does not relate to a criminal matter; and
   ii where the constable is not in uniform, to produce the constable’s badge or other evidence of being a constable; and
   iii inform the person that he or she may contact a lawyer or if appropriate, a responsible adult (see D4.35); and
   iv to inform the person of the maximum duration of the detention.

c An immigration officer or a constable is not guilty of an offence and is not liable to any civil proceedings in respect of the arrest or detention by that officer or constable, if he or she has reasonable and probable grounds for believing that the person is liable to arrest and detention under Part 9 of the Immigration Act 2009.

d A failure to fulfil any of the duties mentioned in (a) and (b) above does not of itself deprive the immigration officer or the constable, or any assistant, of protection from criminal responsibility.

Effective 03/09/2012
D4.13 Additional powers relating to detention by immigration officer

See also Immigration Act 2009 s 328

D4.13.1 An immigration officer may use physical force when exercising detention power

a When exercising the power of detention under section 312 of the Immigration Act 2009, an immigration officer may use such physical force as the immigration officer has reasonable grounds to believe is reasonably necessary:
   i to prevent the detained person from
      o harming any person; or
      o damaging any property; or
      o escaping or attempting to escape from detention; or
   ii to recapture the person, if the person is fleeing, having escaped from detention.

b An immigration officer who uses physical force under this section must:
   i give to the chief executive, or a delegate of the chief executive, a written report of the use of the force, the circumstances in which it was used, and the matters that gave rise to the reasonable grounds to believe required in (a) above; and
   ii provide the report not later than three working days after the use of the force.

D4.13.5 An immigration officer may search a detained person

a When a person has been detained under section 312 of the Immigration Act 2009, an immigration officer may search that person if the immigration officer has reasonable grounds to believe that:
   i the person has an item hidden or in clear view on or about his or her person; and
   ii the item poses a threat to the safety of the officer, or any other person; and
   iii there is a need to act immediately in order to address that threat.

b When carrying out a search under (a) above, an immigration officer may seize any item found on or about a person that the immigration officer has reasonable cause to suspect is an item that poses a threat to the safety of the officer or any other person.

c If necessary, reasonable force may be used to search a person under (b) above and seize any item under (b) above.

d An immigration may detain and destroy any item that he or she seizes under (b) above.

e An immigration officer who undertakes a search under this section must:
   i give to the chief executive, or a delegate of the chief executive, a written report of the search, the circumstances in which it was undertaken, and the matters that gave rise to the reasonable grounds to believe required in (a) above; and
   ii provide the report not later than three working days after the search.

Effective 03/09/2012
D4.14 Search of detained person

D4.14.1 Rub-down search of detained person

See also Search and Surveillance Act 2012 s 85

a An authorised immigration officer may, in accordance with section 85 of the Search and Surveillance Act 2012, carry out a rub-down search of a person who he or she has detained under the Immigration Act 2009, in order to ensure that the person is not carrying anything that may be used to
i harm any person; or
ii facilitate the person’s escape.

b A rub-down search means a search of a clothed person in which an immigration officer conducting the search may do any or all of the following:

i run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than the underclothing) of that person;

ii insert his or her hand inside any pocket or pouch in the clothing (other than the underclothing) of the person being searched.

iii for the purpose of permitting a visual inspection, require the person being searched to do any or all of the following:

- open his or her mouth; or
- display the palms of his or her hands; or
- display the soles of his or her feet; or
- lift or rub his or her hair.

D4.14.5 Things that can be done to facilitate rub-down search

See also Search and Surveillance Act 2012 s 86

a An immigration officer conducting a rub-down search (see D4.14.1(b)) may require the person being searched to:

i remove, raise, lower or open any outer clothing (including (without limitation) any coat, jacket, jumper, or cardigan) being worn by the person being searched, except where that person has no other clothing or only underclothing, under that outer clothing; and

ii remove any head covering, gloves, or footwear (including socks or stockings) being worn by that person.

b A rub-down search of a person may include searching:

i any item carried by, or in the possession of the person, and

ii any outer clothing removed, raised, lowered, or opened for the purposes of the search, and

iii any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.

D4.14.10 Rub-down search may include visual examination

See also Search and Surveillance Act 2012 s 87

A rub-down search may include a visual examination of the mouth, nose, and ears. Such a visual examination can be facilitated by any instrument or device designed to illuminate or magnify, but must not include the insertion of any instrument, device, or thing into any of those orifices.

D4.14.15 Rules about searching persons

See also Search and Surveillance Act 2012 s 125

a When an immigration officer exercises a power to search a person, he or she:

i must identify himself or herself either by name or immigration warrant card number; and

ii must state the name of the enactment under which the search is taking place and the reason for the search under that enactment unless it is impracticable to do so in the circumstances; and
iii must produce his or her immigration warrant card as evidence of his or her identity; and
iv may use any force that is reasonable for the purpose of the search, and
v may use any equipment or aid to facilitate the search, if it is used in a way that:
   o involves no or minimal contact; and
   o is reasonable in the circumstances; and
vi may, if he or she considers that it is in the interests of the person to be searched, request:
   o the assistance of a medical practitioner or nurse; and/or
   o the assistance of a parent, guardian, or other person for the time being responsible for the day-
      to-day care of the person to be searched; and
vii may search any item that:
   o the person is wearing or carrying; or
   o is in the person’s physical possession or immediate control; and
viii may seize anything carried by the person or in the physical possession or immediate control of the
    person being searched if that thing is the subject of the search or may otherwise be lawfully
    seized.

b An immigration officer who carries out a rub-down search must conduct the search with decency and
    sensitivity and in a manner that affords to the person being searched the degree of privacy and dignity
    that is consistent with achieving the purpose of the search.

c If an immigration officer exercises a power to search a person, or searches a person with his or her
    consent, the immigration officer must ensure that an inventory of any items seized as a result of the
    search is prepared promptly and that a copy is given to the person searched.

D4.14.20 Guidelines and rules about use of strip searching
See also Search and Surveillance Act 2012 s 126

a The Search and Surveillance Act 2012 requires the chief executive to issue guidelines concerning the
    circumstances (if any) under which a strip search may be conducted by an immigration officer who is
    authorised to exercise a power to search a person.

b Under no circumstances will an immigration officer conduct a strip search of a person he or she has
    detained. Immigration officers will seek assistance from police if they have any concerns that a person
    who has been detained has concealed an item that may be used to harm any person, or facilitate that
    person’s escape, and that item cannot be seized as a result of a rub-down search.

Effective 08/10/2012
D4.15 Initial period of detention for up to 96 hours without warrant

See previous instructions D4.15 Effective 29/11/2012

See also Immigration Act s 313

a Where a person is liable to arrest and detention under Part 9 of the Immigration Act 2009, for a purpose set out in section 310 of the Immigration Act 2009 (see D4.5), a constable may, and if requested by an immigration officer must, arrest the person without warrant and place them in custody.

b A person arrested and detained under section 313 of the Immigration Act 2009 may be detained only as long as is necessary to achieve the purpose of the arrest and detention without further authority than that section, but must not be detained for a period longer than 96 hours.

c The period of 96 hours in (b) above is to be determined inclusive of any time during which the person was detained by an immigration officer under section 312 of the Immigration Act 2009 (see D4.11).

Effective 03/09/2012
D4.16 Arresting or detaining officer may seek assistance

See previous instructions D4.16 Effective 03/09/2012

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.

Effective 28/08/2017
D4.17 Persons arrested and detained pending making of a deportation order

*See also Immigration Act s 314*

a  This section applies in the case of a person arrested and detained under section 313 of the Immigration Act 2009 on the suspicion of an immigration officer or a constable that the person constitutes a threat or risk to security.

b  If (a) above applies, a constable must as soon as is practicable refer the case to the Minister of Immigration to determine whether to certify, under section 163 of the Immigration Act 2009, that the person constitutes a threat or risk to security.

*Effective 03/09/2012*
D4.20 Turnaround of persons arriving at the border

See previous instructions:
D4.20 Effective 02/02/2015
D4.20 Effective 29/11/2010
D4.20 Effective 03/09/2012

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:

- on the refusal or revocation of entry permission; or
- 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
- 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.

Effective 28/08/2017
D4.25 Detention of persons liable for turnaround

See previous instructions D4.25 Effective 29/11/2010

a. The detention provisions of Part 9 of the Immigration Act 2009 may be applied to any person subject to turnaround within 72 hours of that person’s first contact with an immigration officer after arrival in New Zealand.

b. A warrant of commitment must be obtained if the person is to be detained for more than 96 hours.

c. If a warrant of commitment is necessary, it must be applied for when it becomes apparent that before the expiry of the 96 hour period, the person will not be able to leave New Zealand.

d. A person detained under Part 9 may not be granted bail, but a District Court Judge may order their release on reporting and other conditions under section 320 of the Immigration Act 2009.

Effective 03/09/2012
D4.30 Placing persons who are liable for turnaround

See previous instructions:
D4.30 Effective 29/11/2010
D4.30 Effective 03/09/2012

a In the first instance, a person who is liable for turnaround must be placed on the first available craft (see Y3.70) to take them from New Zealand.

b An immigration officer may use their discretion, bearing in mind the particular circumstances of the case, to determine whether a person who is liable for turnaround, needs to be placed into custody, by considering if:
   i a craft is available (see Y2.30.1) to take them on the same day; and
   ii the officer is satisfied that the person cannot abscond from the airport facilities concerned; and
   iii the person concerned poses no security risk, as assessed in conjunction with the Police.

c The person who is liable for turnaround will normally be placed into custody if:
   i (b)(i) to (iii) above cannot be met; or
   ii for any reason, an available craft:
      o is no longer available to take the person from New Zealand; or
      o is, or is likely to be, delayed in New Zealand for more than 24 hours; or
   iii for any other reason the person is unable to leave New Zealand at the expected time.

d If an immigration officer determines that custody is necessary the officer must:
   i ask a constable to detain the person in custody until departure; and
   ii arrange the departure of the detained person.
D4.35 When turnaround ceases to apply to person remanded in custody or imprisoned

See previous instructions D4.35 Effective 03/09/2012

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.

Effective 28/08/2017
D5 Detention provisions generally
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D5.1 Person may instead agree to residence and reporting requirements

See previous instructions D5.1 Effective 29/11/2010

See also Immigration Act 2009 s 315

a Rather than causing a person who is liable for arrest and detention to be arrested under section 313 of the Immigration Act 2009 or making an application for a warrant of commitment under section 316 of the Immigration Act 2009, an immigration officer and the person liable for arrest and detention may agree that the person will do all or any of the following things:

i reside at a specified place;

ii report to a specified place at specified periods or times in a specified manner;

iii provide a guarantor who is responsible for:
   o ensuring the person complies with any requirements agreed under this section; and
   o reporting any failure by the person to comply with those requirements;

iv if the person is a claimant, attend any required interview with a refugee and protection officer or hearing with the Immigration and Protection Tribunal (the Tribunal);

v undertake any other action to facilitate the person’s deportation or departure from New Zealand.

b A decision as to whether to offer or agree residence and reporting requirements is a matter for the absolute discretion of an immigration officer.

c An immigration officer may at any time vary any residence or reporting requirements at the request or with the agreement of the person.

d The agreement or variation of any residence or reporting requirements must be in writing and must:

i list any requirements agreed under (a) or (c) above; and

ii include a warning that, if the person fails to comply with any agreed requirement, the person may be detained under section 312 of the Immigration Act 2009 or arrested and detained under section 313 of the Immigration Act 2009.

e An immigration officer may at any time, in the officer’s absolute discretion, decide to end any agreement made under (a) above.

f A person may be detained under section 312 of the Immigration Act 2009 or arrested and detained under section 313 of the Immigration Act 2009:

i if an immigration officer determines that the person, without reasonable excuse,
   o has failed to reside at the specified place; or
   o has failed to comply with other agreed requirements; or

ii if an immigration officer ends an agreement under (e) above; or

iii in order to execute a deportation order or place the person on the first available craft leaving New Zealand.

g An agreement under this section lapses and the person ceases to be bound by it when the person leaves New Zealand or otherwise ceases to be liable to arrest and detention under Part 9 of the Immigration Act 2009.

Effective 03/09/2012
D5.5 Application for warrant of commitment

See previous instructions  Effective 29/11/2010

See also Immigration Act 2009 s 316

a An immigration officer may apply to a District Court Judge for a warrant of commitment (or a further warrant of commitment) authorising a person’s detention for up to 28 days in any case where it becomes apparent, in the case of a person detained in custody under Part 9 of the Immigration Act 2009, that before the expiry of the period for which detention is authorised:

i there will not be, or there is unlikely to be, a craft available to take the person from New Zealand; or

ii the person will not, or is unlikely to, supply satisfactory evidence of his or her identity; or

iii the Minister has not made, or is not likely to make, a decision as to whether to certify that the person constitutes a threat or risk to security; or

iv for any other reason, the person is unable to leave New Zealand.

b Every application under this section:

i must be made on oath; and

ii must include a statement of the reasons why the person should be the subject of a warrant of commitment; and

iii may include any other supporting evidence.

c The Judge must determine the application under section 317, 318, or 323 of the Immigration Act 2009 as appropriate.

d Immigration officers applying for mass arrival warrants of commitment, variations of mass arrival warrants of commitment, or further warrants of commitment in respect of members of a mass arrival group must apply in the manner specified in D5.75.

Effective 29/07/2013
D5.10 Decision on application for warrant of commitment

See previous instructions
D5.10 Effective 29/07/2013
D5.10 Effective 29/11/2010

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.

Effective 28/08/2017
D5.15 Warrant of commitment

See also Immigration Act 2009 s 319

a A warrant of commitment authorises the manager of the prison or the person in charge of the premises identified in the warrant to detain the person to whom the warrant relates until the earliest of the following:

i in the case of a person liable for turnaround, the person is delivered into the custody of an immigration officer and detained, or into the custody of a constable and arrested and detained, for the purpose of placing the person on the first available craft to leave New Zealand; or

ii in the case of a person liable for deportation, the person is delivered into the custody of an immigration officer and detained, or into the custody of a constable and arrested and detained, for the purpose of executing the deportation order; or

iii written notification is received from an immigration officer that the person has ceased to be liable to arrest and detention under Part 9 of the Immigration Act 2009; or

iv a Judge orders the release of the person; or

v the warrant of commitment expires.

b The period for which detention is authorised by a warrant of commitment must be calculated exclusive of any period commencing on the date on which the person to whom the warrant relates escapes from lawful custody and ending 96 hours after the date on which the person is again taken into custody under the Immigration Act 2009.

Effective 29/11/2010
D5.20 Court may instead release person on conditions

See previous instructions D5.20 Effective 29/11/2010

See also Immigration Act 2009 s 320

a Where a District Court Judge orders a person’s release on conditions under sections 317(1)(b)(ii), 318(3)(b), or 323(3) of the Immigration Act 2009, the conditions imposed on release may be any conditions that the Judge thinks fit to impose in the circumstances, including all or any of the following conditions:

i the released person must reside at a specified place;

ii the released person must report to a specified place at specified periods or times in a specified manner;

iii if the person is a claimant, the released person must attend any required interview with a refugee and protection officer or hearing with the Tribunal;

iv the released person provide a guarantor who is responsible for:
   o ensuring the person complies with any conditions imposed under this section; and
   o reporting any failure by the person to comply with those conditions;

v the person take a specified action for the purpose of facilitating the person's deportation or departure from New Zealand.

b Where conditions are imposed on a released person under (a) above:

i the conditions must be notified in writing to the person before his or her release, and take effect on release; and

ii the notice of conditions must include a warning that, if the person fails to comply with any condition, the person may be detained under section 312 of the Immigration Act 2009 or arrested and detained under section 313 of the Immigration Act 2009.

c Conditions imposed under this section may be varied at any time:

i by a District Court Judge on the application of the person released or an immigration officer under section 324 of the Immigration Act 2009; or

ii by consent between the released person and an immigration officer, if:
   o the conditions imposed relate to the matters described in (a)(i) or (a)(ii) above; or
   o the order imposing the conditions allows the variation.

d A variation of a condition under (c) above:

i takes effect immediately; but

ii must be put in writing, and notified to the released person, as soon as practicable.

e A person may be detained under section 312 of the Immigration Act 2009 or arrested and detained under section 313 of the Immigration Act 2009:

i if an immigration officer determines that the person, without reasonable excuse, has failed to comply with any conditions imposed under (a) above or varied under (c) above; or

ii if an immigration officer makes an application under section 324(2) of the Immigration Act 2009 for an order that the person be detained under a warrant of commitment; or

iii to execute a deportation order or place the person on the first available craft leaving New Zealand.

f Conditions imposed under this section lapse, and the person ceases to be bound by them, when the person leaves New Zealand or otherwise ceases to be liable to arrest and detention under Part 9 of the Immigration Act 2009.

Effective 03/09/2012
D5.25 Decision on application for warrant if threat or risk to security

See also Immigration Act 2009 s 318

a  This section applies where an immigration officer applies for a warrant of commitment to authorise the detention of a person:

   i  who was arrested and detained under section 313 of the Immigration Act 2009 on the suspicion of an immigration officer or a constable that the person constitutes a threat or risk to security; or

   ii whose deportation has been ordered under section 163 of the Immigration Act 2009.

b  A District Court Judge 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.

c  Otherwise the Judge must:

   i  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

   ii if satisfied that the release of the person would not be contrary to the public interest, order that the person be released on conditions under section 320 of the Immigration Act 2009 pending the person’s deportation from New Zealand.

Effective 29/11/2010
D5.30 Persons detained under warrant of commitment or released on conditions pending making of deportation order

See also Immigration Act 2009 s 322

a  This section applies in the case of a person who was arrested and detained on the suspicion of an immigration officer or a constable that the person constitutes a threat or risk to security and who:
   i  is being detained pursuant to a warrant of commitment issued under section 317 or 318 of the Immigration Act 2009; or
   ii  has been released on conditions under section 320 of the Immigration Act 2009.

b  If the Minister decides not to certify that a person to whom this section applies constitutes a threat or risk to security, or fails to make a certification not later than 14 days after the initial arrest under section 313 of the Immigration Act 2009:
   i  the person ceases to be liable to arrest and detention under Part 9 of the Immigration Act 2009; and
   ii  in the case of a person being detained under a warrant of commitment, an immigration officer must notify that fact in writing to the manager or other person in charge of the prison or premises identified in the warrant.

Effective 29/11/2010
D5.35 Decisions on warrants of commitment where detention beyond 6 months

See also Immigration Act 2009 s 323

a This section applies where a person would, upon a successful application for a further warrant of commitment under section 316 of the Immigration Act 2009, be detained under consecutive warrants of commitment for a continuous period of more than 6 months following:

i the person’s initial detention under a warrant of commitment, where the person has exhausted all appeal rights under the Immigration Act 2009 at the time of that initial detention, or had no such appeal rights; or

ii where (i) above does not apply, the later of:
   o the conclusion of any appeal proceedings brought by the person; or
   o the expiry of any period for bringing such an appeal; or

iii the date when a claim for recognition as a refugee or a protected person is finally determined (within the meaning of section 128 of the Immigration Act 2009), if the claim was made only after the person:
   o was served with a deportation liability notice or order; or
   o was arrested and detained for the purpose of deportation or turnaround.

b A further warrant of commitment authorising the detention of a person to whom this section applies must be issued if a District Court Judge is satisfied:

i that the person’s deportation or departure is prevented by some action or inaction of the person; and

ii that no exceptional circumstances exist that would warrant release.

c If the Judge is not so satisfied, the Judge must order the person’s release on conditions under section 320 of the Immigration Act 2009.

d An application for a further warrant of commitment in a case to which this section applies:

i must be supported by evidence under oath by an immigration officer; and

ii must include a statement as to why the further warrant is required; and

iii may include any other supporting evidence.

e The Judge may require the immigration officer to attend the hearing to give evidence and be subject to cross-examination.

f The period of 6 months referred to in (a) above must be calculated exclusive of any period commencing on the date on which the person to whom the warrant relates escapes from lawful custody and ending 96 hours after the date on which the person is again taken into custody under the Immigration Act 2009.

g This section does not apply to a person whose deportation has been ordered under section 163 of the Immigration Act 2009.

h To avoid doubt, if a person to whom (a)(iii) above applies makes a subsequent claim, the 6-month period must be treated as starting on the date the subsequent claim is finally determined.

i In (a) above, appeal proceedings means the proceedings in respect of which the appeal rights are exercised. Appeal rights means:

   i the rights of appeal the person has or had against liability for deportation; and

   ii the refugee and protection appeals associated with any claim made before the person was served with a deportation liability notice or arrested and detained for the purpose of deportation or turnaround.

j For the purposes of (b) above, exceptional circumstances do not include:

   i the period of time that a person has already been detained under Part 9 of the Immigration Act
2009; or

ii the possibility that the person’s deportation or departure may continue to be prevented by some action or inaction of the person.

k Further mass arrival warrants of commitment must be dealt with in the manner specified at D5.75.15. **Effective 29/07/2013**
D5.40 Review of warrant of commitment or release on conditions

See also Immigration Act 2009 s 324

a At any stage during the currency of a warrant of commitment an immigration officer may apply to a District Court Judge for:
   i a variation of the warrant of commitment; or
   ii an order that the person who is detained under the warrant be released on conditions under section 320 of the Immigration Act 2009; or
   iii an order that the person be released from custody.

b At any stage when a person is released on conditions under section 320 of the Immigration Act 2009 an immigration officer may apply to a District Court Judge for:
   i an order that the person who is released on conditions be detained under a warrant of commitment; or
   ii a variation of conditions.

c Subject to (e) below, a person detained under a warrant of commitment may apply to a District Court Judge for:
   i a variation of the warrant of commitment; or
   ii an order that the person be released on conditions under section 320 of the Immigration Act 2009.

d Subject to (e) below, a person released on conditions may apply to a District Court Judge seeking a variation of those conditions.

e An application under (c) or (d) above must be made with the leave of a District Court Judge, which may be granted only if the Judge is satisfied that new information has become available that:
   i is material to the person's on-going detention or release on conditions; and
   ii was unavailable at the time the warrant of commitment or the decision to release on conditions was made.

f An application for a review of a warrant of commitment or release on conditions must be considered in accordance with sections 317, 318, or 323, of the Immigration Act 2009 as appropriate.

g This section does not apply to mass arrival warrants of commitment and further mass arrival warrants of commitment as defined in sections 317B and 317E(1)(a) of the Immigration Act 2009. Those warrants should be dealt with in the manner specified at D5.75.20.

Effective 29/07/2013
D5.45 Right of access to counsel and legal aid

See also Immigration Act 2009 s 333

a Any person in custody under the Immigration Act 2009 has the right to contact a lawyer or (if the detained person is a minor) any parent or guardian, or nominated responsible adult, and must be informed of that right.

b If the detainee chooses to exercise that right, the person nominated must be allowed access to the detainee and to communicate with the detainee in private.

c Any person about whom a warrant of commitment is being sought under section 316 of the Immigration Act 2009 who is subject to turnaround and/or arrest and detention under Part 9 of the Immigration Act 2009 is eligible to apply for legal aid pursuant to the section 7(1)(l) of the Legal Services Act 2000.

Effective 29/11/2010
D5.50 Bail

See also Immigration Act 2009 ss 308, 316, 317

a A person detained under the Immigration Act 2009 may not be granted bail, but a District Court Judge may order their release on reporting and other conditions.

Effective 29/11/2010
D5.55 Form of custody of persons detained without warrant overnight

See immigration instructions D5.55 effective 29/11/2010

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.

Effective 28/08/2017
D5.60 Form of custody of persons detained under warrant of commitment

See previous instructions D5.60 effective 29/11/2010

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.

Effective 28/08/2017
D5.65 Detention of minors

See also Immigration Act 2009 ss 375, 376, 377

a A minor who is to be detained under Part 9 of the Immigration Act 2009 must have a responsible adult to represent their interests.

b A minor may be detained only in exceptional circumstances, and the approval of the Branch Manager, Compliance Operations Branch, is required for any such detention.

c A minor is a person who is under 18 years of age and who is not married or in a civil union (see D6).

Effective 03/09/2012
D5.70 Delivery of person into custody of immigration officer or police for purposes of deportation

See also Immigration Act 2009 s 335

D5.70.1 Delivery of a person being held in custody

a Where a person is being held in custody pursuant to a warrant of commitment issued under Part 9 of the Immigration Act 2009, an immigration officer or a constable may request the manager or other person in charge of the prison or other premises in which that person is held in custody to deliver the person into the custody of:

i a constable for arrest and detention under section 313 of the Immigration Act 2009; or

ii an immigration officer for detention under section 312 of the Immigration Act 2009

for the purpose of executing the person’s deportation or effecting the person’s departure from New Zealand.

b The manager or other person must deliver the person accordingly.

D5.70.5 Delivery of a person who is in prison

a Where a person is in prison undergoing imprisonment, an immigration officer or a constable may, on the date that the person is due to be released from imprisonment, request that, instead of releasing the person from custody, the manager or other person in charge deliver the person into the custody of:

i a constable for arrest and detention under section 313 of the Immigration Act 2009; or

ii an immigration officer for detention under section 312 of the Immigration Act 2009

for the purpose of executing the person’s deportation or effecting the person’s departure from New Zealand.

b The manager or other person must deliver the person accordingly.

Effective 03/09/2012
D5.75 Mass arrival warrants of commitment
a A mass arrival warrant of commitment may be granted for members of a mass arrival group as defined at C8.5, but not for unaccompanied minors as defined at C8.5.5.
b Mass arrival warrants of commitment are subject to the provisions specified at D5.15.
c An approved form of custody, as specified at D5.60, must be used for persons detained under a mass arrival warrant of commitment.
d Provisions specified at D5.65 must be applied to minors who are to be detained.

D5.75.1 Applying for a mass arrival warrant of commitment
a An immigration officer may apply to a District Court Judge for a mass arrival warrant of commitment authorising the detention, for a period of not more than six months, of the members of a mass arrival group if:
   i the warrant is necessary to:
      o effectively manage the mass arrival group; or
      o manage any threat or risk to security or to the public arising from, or that may arise from, a member or members of the mass arrival group; or
      o uphold the integrity or efficiency of the immigration system; or
      o avoid disrupting the efficient functioning of the District Court (including the warrant of commitment application process); and
   ii the members of the mass arrival group are detained in custody under Part 9 of the Immigration Act 2009; and
   iii it becomes apparent that one or more circumstances described in paragraphs (a) to (d) of section 316(1) of the Immigration Act 2009 will apply to each member of the mass arrival group to be detained under the warrant of commitment.
b Every application for a mass arrival warrant of commitment must be made under oath and include:
   i the number of persons to whom the warrant is to apply; and
   ii identity information in respect of each of the persons; and
   iii particulars of the craft, or of each of the group of craft, on which the persons arrived (if known); and
   iv a description of the circumstances in which the craft, of the group of craft, arrived; and
   v a statement of why the warrant is necessary in terms of D5.75.1(a)(i); and
   vi a statement of how the requirements at D5.75.1(a)(iii) relate to each person to whom the warrant is to apply.
c An application for a mass arrival warrant of commitment may, but is not required to, include other supporting evidence or information relating to the members of the mass arrival group included in the warrant.

D5.75.5 Applying for a variation of a mass arrival warrant of commitment
a An immigration officer may apply for a variation of a mass arrival warrant of commitment issued under D5.75.1 for it to include one or more persons who are members of the mass arrival group, but who were not known to the immigration officer who made the original application for a mass arrival warrant.
b An application for a variation of a mass arrival warrant must be made under oath and include:
   i a copy of the original application and warrant; and
   ii identity information in respect of each person to be added in the warrant; and
   iii a statement of how the requirements at D5.75.1(a)(iii) relate to each person to be included in the warrant.
D5.75.10 Imposition of reporting requirements on an immigration officer

a A District Court Judge may order an immigration officer to report to the court, on a day or days determined by the court but no more than once every 28 days to the duration of the warrant, on the continuing applicability of the reasons for the warrant.

b A District Court Judge may shorten the period of a warrant if he or she is satisfied that the reasons for the warrant will no longer apply.

D5.75.15 Applying for a further warrant of commitment in respect of members of a mass arrival group

a An immigration officer may apply to a District Court judge for a further warrant of commitment, effective for a period of not more than 28 days, applying to:
   i all or specified members of a mass arrival group (as members of a mass arrival group); or
   ii one or more members of a mass arrival group (as individuals).

b An application for a further warrant of commitment in respect to members of a mass arrival group must include the evidence, and be made in the manner, specified at D5.75.1(b).

D5.75.20 Review of a mass arrival warrant of commitment or a further mass arrival warrant of commitment.

See also Immigration Act 2009 s 324A

a At any stage during the currency of a warrant of commitment an immigration officer may apply to a District Court Judge for a variation of the mass arrival warrant of commitment to:
   i shorten the period that the warrant applies; and/or
   ii provide for one or more persons detained under the warrant to be detained in a place or places other than the place or places that are specified currently.

b At any stage during the currency of a mass arrival warrant of commitment, an immigration officer may, in respect of a particular individual detained under the warrant, apply to a District Court Judge for:
   i a warrant of commitment for the individual under section 316 of the Immigration Act 2009; or
   ii an order that the individual be released on conditions under section 320 of the Immigration Act 2009; or
   iii an order that the individual be released.

D5.75.25 Persons not to be treated as members of a mass arrival group

a If a person is dealt with under D5.75.15(a)(ii) or D5.75.20(b), he or she:
   i will no longer be treated as a member of the mass arrival group for the purposes of the Immigration Act 2009; and
   ii will not be subject to requirements at C8.10, C8.15 or C8.20 or requirements applying to members of mass arrival groups elsewhere in immigration or operational instructions.

b If a person, or persons, to whom (a) above applies has already been granted a visa under instructions C8.20 at the time of the Judge’s determination, the validity and conditions of that visa, or those visas, already granted will not be affected by the application of (a) above.

Effective 29/07/2013
D6 Minors
IN THIS SECTION

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D6.30 Detention of minors .................................................................................................................. 101
D6.1 Definition of 'minor'

See also Immigration Act 2009 s 375

A minor is a person who is under 18 years of age and who is not married or in a civil union.

Effective 29/11/2010
D6.5 Nomination of responsible adult

See also Immigration Act 2008 s 375

a A minor’s interests are to be represented by the minor’s parent, and the parent is the person who is the responsible adult for the minor for the following matters under the Immigration Act 2009:

i the minor’s liability for deportation, and the deportation of the minor; or
ii any claim by the minor for recognition as a refugee or a protected person; or
iii any appeal or review proceedings by the minor under the Immigration Act 2009; or
iv any detention of the minor under the Immigration Act 2009.

b If a minor does not have a parent to act as a responsible adult to represent their interests, a responsible adult must be nominated to represent their interests.

c The responsible adult is to be nominated by the Immigration and Protection Tribunal, an immigration officer, a refugee and protection officer, or a Judge, as the case may require.

d A person may be nominated as a responsible adult only if:

i the person is 20 or older; and
ii except in the case of a parent or guardian of the minor, the person is a New Zealand citizen, resident or permanent resident; and
iii the person is
   o a parent, guardian or relative of the minor; or
   o a person suggested by the minor; or
   o any other person having responsibility for the minor or who is otherwise suitable to represent the minor’s interests; or
   o if no other suitable person is available, a person designated 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; and
   o except in the case of a parent or guardian of the minor the person agrees in writing to be nominated as a responsible adult.

e Should the need arise, and after reasonable consultation, a substitute responsible adult may be nominated, in accordance with the requirements of this section.

f A responsible adult who is representing the interests of the minor must supply an immigration officer, a refugee and protection officer or the Immigration and Protection Tribunal with an address in New Zealand at which they may be notified of any matter concerning the minor.

Effective 29/11/2010
D6.10 Roles and rights of responsible adult

*See also Immigration Act 2009 ss 375, 376*

a The role of a responsible adult relates only to those matters or proceedings for which the nomination was made.

b The role of responsible adult finishes when the minor leaves New Zealand, or the matter or proceedings concerned are complete, as the case may be.

c The responsible adult may, on the minor’s behalf:
   i appeal to the Immigration and Protection Tribunal under Part 7 of the Immigration Act 2009; or
   ii appeal to the High Court under section 245 the Immigration Act 2009; or
   iii bring review proceedings in the High Court in accordance with the Immigration Act 2009.

d The responsible adult may make submissions to the Immigration and Protection Tribunal.

e The responsible adult may appear and be heard in any District Court proceedings under the Act relating to the minor.

f To the extent practicable given the level of maturity and understanding of the minor, the responsible adult must try to find out the views of the minor and make them known on behalf of the minor, if appropriate.

g Any document that must be served on or notified to the minor must instead be served on or notified to the responsible adult, and such service or notification is presumed to be service on or notification to the minor.

*Effective 29/11/2010*
D6.15 Views of minor to be considered

See also Immigration Act 2009 s 377

a In any proceedings or process of a kind referred to in D6.5(a) relating to a minor, the minor must be given an opportunity to express their views on the matter, whether personally or through a responsible adult.

b Due weight is to be given to those views taking into account the minor’s age and level of maturity and understanding.

Effective 29/11/2010
D6.20 Serving a deportation order on a minor

If the subject of a deportation order is a minor the order must be served on the nominated responsible adult.

Effective 29/11/2010
D6.25 Executing a removal order or deportation order on a minor

See also Immigration Act 2009 s 375

a If a minor is to be deported from New Zealand and a parent or guardian is not accompanying them, immigration officers must make all reasonable efforts to contact their parent or guardian to agree on suitable travelling arrangements for them.

b If agreement on the travel arrangements cannot be reached, immigration officers must make travel arrangements for the person in consultation with:
   i the nominated responsible adult for the person; or
   ii if consultation with the nominated responsible adult is not possible or practicable, with the Chief Executive of the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989.

Effective 29/11/2010
D6.30 Detention of minors

See also Immigration Act 2009 s 375

a A minor who is to be detained under the Immigration Act 2009 must have a responsible adult to represent their interests.

b A minor may be detained only in exceptional circumstances, and the approval of the National Manager, Border and Compliance Operations, is required for any such detention.

Effective 29/11/2010
D7 Prosecutions

The Immigration Act 2009 contains a number of offence provisions.

Effective 29/11/2010
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D7.1 Provision of false or misleading information

See also Immigration Act s 342

a Section 342 provides for it to be an offence to make a statement, or provide information, evidence, or a submission, knowing that it is false or misleading in any material respect, in support of:

i any application or request for a visa or entry permission, or expression of interest in a visa; or
ii any request for variation, waiver, or cancellation of the conditions of a visa; or
iii any appeal to the Minister of Immigration or the Immigration and Protection Tribunal.

b It is also an offence:

i to produce or surrender any document or supply any information to an immigration officer or a refugee and protection officer knowing that it is false or misleading in any material respect, and
ii to complete any document required as part of a border requirement in a manner that the person knows to be false or misleading, or fail to comply with any responsibilities under section 103 of the Immigration Act 2009.

Effective 29/11/2010
D7.5 Aiding and abetting

See also Immigration Act s 343

a Section 343 of the Immigration Act 2009 provides for it to be an offence to for a material benefit, aid, abet, incite, counsel, or procure another person to remain unlawfully in New Zealand or to breach any conditions of a visa the other person holds.

b Whether in or outside New Zealand, and whether or not the other person in fact enters New Zealand, it is also an offence under section 343 of the Immigration Act 2009 to aid, abet, incite, counsel, or procure another person to:

i unlawfully enter New Zealand:
   o knowing that the other person’s entry into New Zealand is or would be unlawful; or
   o being reckless as to whether the other person’s entry into New Zealand is or would be unlawful; or

ii breach any condition of a visa the other person holds under the Immigration Act 2009; or

iii remain in New Zealand unlawfully; or

iv complete a document for entry to New Zealand in a manner that the person aiding or assisting knows is false or misleading for the purposes of:
   o section 98 or 103 of the Immigration Act 2009; or
   o any application or request for a visa or entry permission or expression of interest in a visa; or
   o making any request for variation, waiver, or cancellation of the conditions of a visa; or
   o making an appeal or application in the nature of an appeal to the Minister of Immigration or the Immigration and Protection Tribunal.

Effective 29/11/2010
D7.10 Obstruction or failing to meet requirements

See previous instructions D7.10 effective 29/11/2010

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.

Effective 28/08/2017
D7.15 Improper dealings with immigration or identity documents

See also Immigration Act s 345

a It is an offence, whether inside or outside New Zealand, to produce, surrender or pass off an immigration or identity document:
   i as one’s own knowing the document relates to some other person; or
   ii knowing the document to have been forged or obtained fraudulently.

b It is an offence, whether in or outside New Zealand, to sell, hire, lend, give, or otherwise dispose of an immigration or identity document relating to oneself to any other person (the receiver) knowing or intending that the receiver intends to:
   i produce it or pass it off as relating to the receiver; or
   ii sell, hire, lend, give, or otherwise dispose of it.

c An immigration or identity document means:
   i a passport; or
   ii a certificate of identity; or
   iii an endorsement in a passport of the type described in section 384 of the Immigration Act 2009; or
   iv evidence of a visa; or
   v an invitation to apply for a visa; or
   vi a certificate of citizenship; or
   vii anything purporting to be a document described in any of paragraphs (i) to (vii) above.

Effective 29/11/2010
D7.20 Impersonation

See also Immigration Act s 346

It is an offence, not being an immigration officer or a refugee protection officer, to impersonate or pretend to be an immigration officer or a refugee and protection officer.

Effective 29/11/2010
D7.25 Publishing false or misleading information

See also Immigration Act s 347

It is an offence to publish, disseminate, cause or procure the publication of false or misleading information or representation for the purpose of encouraging, inducing, deterring, or preventing immigration to New Zealand of any person or class of persons, knowing that the information or representation is false or misleading.

Effective 29/11/2010
D7.30 Alteration of forms

See also Immigration Act s 348

a It is an offence for anyone, not being an immigration officer or refugee and protection officer, after a person has signed a form and declared its contents to be true, to:

i alter information entered on it; or

ii enter further information on it; or

iii alter any material attached to it; or

iv attach any material or further material to it; and

v not identify that the information or contents have been altered, and who has made the alteration.

Effective 29/11/2010
D7.35 Offences relating to carriers or a person in charge of a craft

See previous instructions
D7.35 Effective 02/07/2012
D7.35 Effective 29/11/2010

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 Ac 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 follows:

<table>
<thead>
<tr>
<th>Provision of the Immigration Act 2009 (the Act)</th>
<th>Description of offence</th>
<th>Nature of offence</th>
<th>Fee for owner, charterer or agent ($)</th>
<th>Fee for person in charge of the craft ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>349(1)(a)</td>
<td>Failing without reasonable excuse to comply with any of the carrier’s or the person’s responsibilities under section 96(2) of the Act.</td>
<td>Failure to comply with the obligation to provide Advance Passenger Processing data.</td>
<td>1,000</td>
<td>500</td>
</tr>
<tr>
<td>349(1)(b)</td>
<td>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.</td>
<td>Failure to wait for an Advance Passenger Processing directive.</td>
<td>1,000</td>
<td>500</td>
</tr>
<tr>
<td>349(1)(c)</td>
<td>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.</td>
<td>Failure to comply with a directive not to allow a passenger to board.</td>
<td>5,000</td>
<td>2,500</td>
</tr>
<tr>
<td>349(1)(c)</td>
<td>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</td>
<td>Failure to ensure person complies with certain conditions, except where the condition is to show evidence of an outward ticket.</td>
<td>1,000</td>
<td>500</td>
</tr>
</tbody>
</table>
Failing without reasonable excuse to provide the chief executive with information under section 102(2), (4), or (5) of the Act.

| 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 |

Failing without reasonable excuse to comply with any of the requirements of section 101(1)(a) of the Act.

| 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.

Effective 28/08/2017
D7.40 Offences by employers

See also Immigration Act s 350

a It is an offence for an employer to:
   i allow or continue to allow any person to work in their service, knowing that the person is not entitled under the Immigration Act 2009 to do that work; or
   ii allow a person who is not entitled under the Immigration Act 2009 to do that work.

b It is a defence to a charge under subsection (a)(ii) above if the employer:
   i did not know that the person was not entitled to do the work; and
   ii took reasonable precautions and exercised due diligence to ascertain whether the person was entitled to do the work.

c Except as provided in (b) above, it is not a defence to a charge under (a)(ii) above that the employer did not know that the person was not entitled to do that work.

d For the purposes of section 350 of the Immigration Act 2009, an employer is treated as knowing that an employee is not entitled under this Act to do any particular work if, at any time in the preceding 12 months (whether before or after the commencement of section 350 of the Immigration Act 2009), the employer has been informed of that fact in writing by an immigration officer.

e “Reasonable precautions” for the purpose of (b)(ii) above includes but is not limited to an enquiry made to VisaView (http://www.immigration.govt.nz/visaview).

D7.40.1 Prosecution under section 350

a For a prosecution to succeed under section 350 of the Immigration Act 2009 it is necessary to prove that the employer:
   i knowing a person is not entitled to undertake employment in New Zealand, allows or continues to allow that person to undertake employment; or
   ii allowed a person who is not entitled to work under the Immigration Act 2009 to work.

b Consideration should be given as to whether to make the person working without authority liable for deportation under section 157 of the Immigration Act 2009. (see D3.30)

c No employer is liable for an offence under section 350 of the Immigration Act 2009 if they continue to employ a person while complying with the minimum requirements of an employment contract relating to termination of employment.

D7.40.5 Assessing eligibility to work

a Although there is no requirement for an employer to verify an employee or potential employee’s entitlement to work, unless an employer has taken reasonable precautions to ascertain that the person could legally work, it is not a defence that the employer did not know that the person was not entitled under the Immigration Act 2009 to do that work.

b To take reasonable precautions to verify the work entitlement of an employee or potential employee, an employer should:
   i request suitable documentation proving the person’s right to work in New Zealand (see W2.10.6); or
   ii make an enquiry through VisaView on the INZ website at www.immigration.govt.nz/VisaView (http://www.immigration.govt.nz/visaview); or
   iii contact the Immigration New Zealand Contact Centre.
Note: It was previously a reasonable excuse for allowing a person who was not entitled under section 39 of the 1987 Act to work for an employer to do so if the employer concerned:

a. did not know that the person was not entitled to work for them; and

b. that person held a signed tax code declaration that stated that they were entitled under the Immigration Act 1987 to work for the employer.

That defence no longer exists.

Effective 19/06/2017
D7.45 Exploitation of unlawful employees and temporary workers

See previous instructions:
D7.45 Effective 29/11/2010

a An employer commits an offence against the Immigration Act 2009 who, while allowing an unlawful employee or temporary worker to work in the employer’s service:
   i is responsible for a serious failure to pay to the employee money payable under the Holidays Act 2003; or
   ii is in serious default under the Minimum Wage Act 1983 in respect of the employee; or
   iii is responsible for a serious contravention of the Wages Protection Act 1983 in respect of the employee.

b It is also an offence for an employer, while allowing an unlawful employee or temporary worker to work in the employer’s service, to take an action with the intention of preventing or hindering the employee from:
   i leaving the employer’s service; or
   ii leaving New Zealand; or
   iii ascertaining or seeking his or her entitlements under the law of New Zealand; or
   iv disclosing to any person the circumstances of his or her work for the employer.

c The following matters may be taken into account in deciding whether a failure, default, or contravention is serious:
   i the amount of money involved; and
   ii whether it comprises a single instance or a series of instances; and
   iii if, it comprises a series of instances, the number of instances and the period over which they occurred; and
   iv whether or not it was intentional; and
   v whether the employer concerned has complied with record-keeping obligations imposed by the Act concerned; and
   vi any other relevant matter.

d The following are examples of actions of the kind referred to in (b) above:
   i taking or retaining possession or control of a person’s passport, any other travel or identity document, or travel tickets; or
   ii preventing or hindering a person from:
       o having access to a telephone; or
       o using a telephone; or
       o using a telephone privately; or
       o leaving premises; or
       o leaving premises unaccompanied; or
   iii preventing or hindering a labour inspector (within the meaning of the Employment Relations Act 2000) from entering or having access to any place or premises to which he or she is entitled to have access under any enactment.

e In these provisions, in relation to an employer:
   i a temporary worker means a person:
       o who the employer knows holds a temporary entry class visa; or
       o who holds a temporary entry class visa and in respect of whom the employer is reckless as to whether or not the person holds a temporary entry class visa
   ii an unlawful employee means a person who undertakes work for the employer that:
the employer knows, under this Act, the person is not entitled to undertake; or the person is, under this Act, not entitled to undertake and in respect of which the employer is reckless as to whether or not the person is entitled to undertake the work.

Effective 09/04/2016
D7.50 Offences by education providers

See previous instructions:
D7.50 29/11/2010

See also Immigration Act s 352

a It is an offence for an education provider:
   i to allow or continue to allow a person to undertake a programme of study knowing that the
      person is not entitled under the Immigration Act 2009 to undertake the programme of study; or
   ii to allow any other person to undertake a programme of study if the person is not entitled under
      the Immigration Act 2009 to take the programme of study.

b Subsection (a) above does not apply to compulsory education. This means that a child may attend
school in New Zealand whether or not they are legally entitled to study, ending on 1 January following
the person’s 19th birthday.

c It is a defence to a charge under (a)(ii) above that the education provider:
   i did not know that the person was not entitled to undertake the programme of study; and
   ii took reasonable precautions and exercised due diligence to ascertain whether the person was
      entitled to undertake that programme of study.

d Except as provided in (c) above, it is not a defence to a charge under (a)(ii) above that the education
provider did not know that the person was not entitled under the Immigration Act 2009 to undertake
that programme of study.

e Allowing a person to undertake a programme of study includes accepting the person for enrolment in
a programme of study.

f A person is treated as knowing that a person is not entitled under the Immigration Act 2009 to study
in New Zealand if, at any time in the preceding 12 months the person has been informed of that fact
in writing by an immigration officer.

g An immigration officer may then require the educator to stop teaching or training that person. The
immigration officer should confirm that requirement in writing and include a warning that failure to
comply may result in prosecution. Consideration should also be given as to whether to make the
person studying without authority may be liable for deportation under section 157 of the Immigration
Act 2009.

Effective 02/12/2013
D7.55 Offences in relation to Tribunal

See also Immigration Act s 353

a  Section 353 of the Immigration Act 2009 makes it an offence for any person, who after being summoned to attend to give evidence before the Tribunal, or to produce to it any papers, documents, records, or things, without sufficient cause:
   i  fails to attend in accordance with the summons; or
   ii  refuses to be sworn or to give evidence, or having been sworn refuses to answer any question that the person is lawfully required by the Tribunal or any member of it; or
   iii  fails to produce any such document, record, or thing.

b  Section 353 of the Immigration Act 2009 makes it an offence for any person who:
   i  intentionally obstructs or hinders the Tribunal or any member of it; or
   ii  without sufficient cause, fails to comply with any requirement of the Tribunal or authorised person made under clause 10(1)(b) or (c) of Schedule 2 of the Immigration Act 2009; or
   iii  without sufficient cause, acts in contravention of or fails to comply with any order made by the Tribunal under clause 10(3) of Schedule 2 of the Immigration Act 2009 or any term or condition of the order.

Effective 29/11/2010
D7.60 Failure to maintain confidentiality in relation to refugee or protection matters

See also Immigration Act s 354

It is an offence to, without reasonable excuse:

a contravene the requirements to maintain refugee and protection claimants’ confidentiality as detailed in section 151(1) of the Immigration Act 2009; or

b publish any information which is released in contravention of section 151(1) of the Immigration Act 2009.

Effective 29/11/2010
D7.65 Offences under other legislation

While the Immigration Act 2009 has a number of provisions which carry their own penalties on conviction, prosecution may be warranted under some other legislation, depending on the nature of the offence. For example, instances of document fraud may be covered by the Crimes Act 1961 (INZ fraud branch may take Crimes Act prosecution), and passport forgery by the Passports Act 1992.

Effective 29/11/2010
D7.70 Transitional provisions relating to offences

*See also Immigration Act s 455*

a A person commits an offence against section 343(1)(d) of the Immigration Act 2009 whether the condition concerned was:
   i imposed (or deemed to be imposed) under the Immigration Act 2009; or
   ii imposed under the Immigration Act 1987 (whether as a requirement or a condition).

b A person commits an offence against section 344(a) of the Immigration Act 2009 whether the document or information was required:
   i under the Immigration Act 2009; or
   ii under the Immigration Act 1987, if the officer could lawfully require the document or information under that Act.

*Effective 29/11/2010*
D7.75 Offences by employers – transitional provisions

See also Immigration Act s 456

If, before the commencement of the Immigration Act 2009, an employer:

a. allowed a person to work for them; and

b. when they started work the employer had a reasonable excuse under section 39(1B) of the Immigration Act 1987 for allowing them to undertake employment (see D7.40.5 note); and

c. the person is not entitled under the Immigration Act 2009 to undertake that employment;

that employer is not liable for an offence under section 350(1)(b) of the Immigration Act 2009 for any period after the repeal of the Immigration Act 1987 during which the employer continues to employ the employee unless the employer had been informed in writing by an immigration officer (under either the Immigration Act 1987 or 2009) that the worker is not entitled to undertake that employment.

Effective 29/11/2010
D8 Repatriations
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D8.1 Repatriation of people from New Zealand

See also Immigration Act 2009 s 398

a Repatriation involves the State paying some or all travel costs to enable visa holders to return to a country to which they have right of entry. This will usually be their country of citizenship.

b In some cases where the family unit wishes to remain intact, this may include repatriating a New Zealand citizen, residence class visa holder, spouse, partner or dependent child.

c Repatriation will normally only occur in circumstances where the person is the holder of a current visa or has been in New Zealand unlawfully for less than 42 days, and then, only if D8.5 applies.

Effective 29/11/2010
D8.5 Categories of people who may be considered for repatriation

People are not normally considered for repatriation unless:

a. they wish to leave New Zealand, or if they are incapable of making such a decision themselves by reason of their mental condition, the relevant agencies involved consider that it is in the best interests of the person to return to their own country because of lack of family support and links in New Zealand; and/or

b. they do not have the financial means to leave New Zealand themselves and are unable to obtain assistance from any other source; and/or

c. they are a burden on the State and likely to remain so, because they:
   i. are destitute and require social welfare assistance; or
   ii. require long term medical or psychiatric treatment or hospitalisation; and/or

d. the State is removing one or more members of a family from New Zealand, and the family wishes to remain together but does not have the financial means to leave New Zealand themselves and are unable to obtain assistance from any other source.

Effective 29/11/2010
D8.10 Action before approval of repatriation

a Before approving repatriation it is necessary to confirm:
   i the person being considered for repatriation wishes to be repatriated or, if they are incapable of making that decision, that repatriation is the best option for the individual and New Zealand; and
   ii the full costs of repatriation have been established, including the cost of an escort(s) if required; and
   iii financial assistance to meet the costs of repatriation is not available from any other source either in full or part; and
   iv the person(s) being repatriated have right of entry to the country they are being repatriated to; and
   v the person is not more appropriately subject to deportation.

b Approval for repatriation can only be given by officers with Schedule 1 delegations.  

Effective 29/11/2010