



## BRIEFING

### Immigration New Zealand Operational Manual: Amendments Requiring Ministerial Certification to implement the New Zealand Government response to the novel coronavirus (COVID-19) outbreak – exceptional cases

Date:	27 March 2020	Priority:	Urgent
Security classification:	Sensitive	Tracking number:	BR 2827 19-20

Action sought		Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration		Agree to the recommendations	27 March 2020
Hon Poto Williams Associate Minister of Immigration		Copy for your information	N/A

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Alejandra Mercado	Manager, Operational Policy, Enablement	s 9(2)(a)	✓
Simon Barrett	Business Analyst, Operational Policy, Enablement	s 9(2)(a)	

The following departments/agencies have been consulted

#### Minister's office to complete:

- Approved       Declined  
 Noted       Needs change  
 Seen       Overtaken by Events  
 See Minister's Notes       Withdrawn

#### Comments

# BRIEFING

## Immigration New Zealand Operational Manual: Amendments Requiring Ministerial Certification to implement the New Zealand Government response to the novel coronavirus (COVID-19) outbreak – exceptional cases

Date:	26 March 2020	Priority:	Urgent
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### Purpose

This paper seeks that you agree to and certify proposed changes to immigration instructions to support the decisions made on 19 March 2020, by Ministers with Power to Act, to expand Category 1A countries to include the rest of the world and restrict any person from coming to New Zealand, unless excluded [CAB 20 MIN 0122]. This decision established several categories of people exempt including a humanitarian category with a high bar for approval. This proposal also allows for the imposition of the condition on any existing temporary entry class visa that the holder adhere to any instructions of a Medical Officer of Health.

These changes are recommended to achieve three objectives: to manage the legal risks associated with the current approach to exceptions; to provide a more transparent process for travellers; and to enable Immigration New Zealand to operationally manage the large number of exceptions being sought. Overall, the changes provide an enhanced framework to restrict people coming to New Zealand, in line with Cabinet's decisions on the temporary border closure. There is an option to remain with the status quo (consideration of exceptions at the border), which may be operationally manageable in the context of diminishing opportunity to travel to New Zealand. However it will not resolve the legal issues or concerns of travellers about the transparency of the process.

These changes contribute to the New Zealand Government response to the novel coronavirus (COVID-19) outbreak.

### Recommended action

- a Note that the current process for allowing exceptions to the New Zealand border closure creates legal and operational risks for Immigration New Zealand and the Crown.

Noted

- b Note that despite the current ban on travel to New Zealand, Cabinet agreed to allow people to seek exceptions on a case-by-case basis in particular for:

1. Humanitarian reasons;
2. Essential health workers;
3. Citizens of Samoa and Tonga for essential travel to New Zealand;
4. Those on visitor visas who are partners or dependents of a temporary work or student visa holder, and who normally live in New Zealand;

5. Any other essential workers identified by the group of Ministers with Power to Act.

*Noted*

- c **Note** that the current process can require border officers to make decisions with limited information at the time of check-in.

*Noted*

- d **Agree** either to:

1. Certify immigration instructions which give effect to a new process to manage requests from people seeking an exception to the border restrictions under one of the agreed criteria (recommended);

*Agree / Disagree*

Or

2. Maintain the existing process that requires people seeking travel to New Zealand as an exception to be considered by a border officer in all cases.

*Agree / Disagree*

- e If you agree to option (d) (1) above, **agree** also to allow partners and dependent children travelling with a New Zealand citizen or resident to choose to use the proposed process to gain certainty they can travel to New Zealand (recommended).

*Agree / Disagree*

- f If you agree to option (d) (1) above, **agree** to the proposed changes to immigration instructions by signing the associated ministerial certificates attached at the end of Appendix 1, Appendix 2 and Appendix 3 (recommended).

*Agree / Disagree*

- g If you agree to option (d) (1) above, **agree** to waive by special direction the application fee, immigration levy and international tourism and conservation levy for people invited to apply for either a visitor visa, or to vary their existing visa (recommended).

*Agree / Disagree*

- h **Note** that the proposed new process uses the visa decision making framework to consider requests for exceptions and facilitate travel for truly exceptional cases.

*Noted*

- i **Note** that this process is intended to provide greater certainty to people seeking to return to New Zealand despite the border closure and does not replace their ability to seek a discretionary decision at the border without first making an application.

*Noted*

- j **Note** that a person allowed to travel under the proposed process who is then granted entry permission will be subject to isolation or quarantine on arrival in accordance with Ministry of Health requirements.

*Noted*

- k **Note** that the proposed immigration instructions will come into effect on the date of signature and will be in force until revoked.

*Noted*



Stephen Dunstan  
**General Manager**  
Enablement  
Ministry of Business, Innovation and Employment

*27.3.20*

Hon Iain Lees-Galloway  
**Minister of Immigration**



## **Background**

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1. On 19 March 2020, Ministers with Power to Act agreed that in addition to China and Iran, persons from the rest of the world are restricted from coming to New Zealand, unless excluded as below [CAB 20 MIN 0122].
2. The following people were excluded from the temporary border measures:
  - a. New Zealand citizens and residence class visa holders<sup>1</sup> (including the Realm);
  - b. The partner, dependent children or legal guardian travelling with a New Zealand citizen or residence class visa holder;
  - c. Australian citizens and permanent residence class visa holders ordinarily resident in New Zealand;
  - d. Diplomats accredited to New Zealand and currently resident in New Zealand; and
  - e. People subject to regulation 25 of the Immigration (Visa, Entry Permission and Related Matters) Regulations 2010, which includes air and marine crew.
3. Cabinet also agreed that exceptions can be sought in relation to the travel restrictions on a case-by-case basis, in particular for:
  - a. Humanitarian reasons;
  - b. Essential health workers;
  - c. Citizens of Samoa and Tonga for essential travel to New Zealand;
  - d. Those on visitor visas who are partners or dependents of a temporary work or student visa holder, and who normally live in New Zealand;
  - e. Any other essential workers identified by the group of Ministers with Power to Act.
4. On 19 March you certified immigration instructions that gave effect to prohibiting the grant of entry permission or transit visas, and a special direction which suspends the transit visa waiver status of certain nationals [ref BR 2766 19-20]. Those immigration instructions slightly extended the exception case in (3)(e) above to also include partners and dependents holding work or student visas (and not only visitor visa holders).

## **Further Proposals**

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*There is a case for an enhanced and more transparent approach to considering exceptions*

5. Following the implementation of the new measures it has become apparent that there is a need for an enhanced approach to the process for considering exceptions. <sup>s 9(2)(h)</sup>  
<sup>s 9 2)(h)</sup>
6. The current process requires a traveller to attempt to check-in to a flight to New Zealand, to be refused permission to board, for the airline to then contact Immigration New Zealand, and an immigration officer in New Zealand to decide whether an exception should be made.

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<sup>1</sup> This exemption from these restrictions will not apply to a person whose residence class visa was granted offshore and the person is arriving in New Zealand for the first time.

*The current approach has operational challenges*

7. There are a large number of people outside New Zealand seeking consideration as an exception. Some are attempting to check-in to a flight to New Zealand and are not allowed to board. This is because either the airlines lack the resources to seek boarding permission from INZ for the large numbers of people seeking exceptions, or because INZ is unable to respond to the large number of requests, or because INZ is unwilling to consider a person exceptional given the paucity of information available about their circumstances.
8. It's difficult to estimate the quantity of this demand, but in 2012 Statistics New Zealand estimated there are between 600,000 to 1,000,000 New Zealanders (New Zealander-born and New Zealand citizens) overseas. If 2% of these people have non-New Zealand partners and children there could be between 12,000 – 20,000 people seeking exemptions as partners and children travelling with a New Zealand citizen or resident. 2% is a rough estimate of the percentage of non-New Zealanders on international flights that enter New Zealand (when these flights are available). The number of marginal cases where people expect an exception to be made (and thus may attempt to board a flight to New Zealand or make contact with INZ) is likely to be higher.
9. Other exemptions grounds include essential health workers, other essential workers and for humanitarian reasons. The number of requests for these people to be considered exemptions is difficult to estimate though given the relatively high number of New Zealanders with close family overseas, this group is likely to be large.
10. People who are unsuccessful attempting to board a flight to New Zealand, or who seek some certainty before attempting to travel to New Zealand are attempting to contact INZ for assurance. These requests are being made to Ministers, senior officials at INZ MBIE, to the Immigration Contact Centre and through any other channel available.
11. The large number of requests creates extra and unnecessary work for these officials at a time they are required to respond to systemic issues, rather than case-by-case decisions. Even where an official is satisfied that a person has an exceptional case that meets the criteria set by the Government, that person has no way to access or influence discretionary decision making by a border officer (nor should they). Where a special case can be justified, the government agent can request that you, as the Minister of Immigration, make a special direction granting entry permission to a particular person or group of people.
12. This process is time-consuming and may not be the best use of time for officials. Even in cases where a special direction is made, the person concerned will still be refused permission to board unless the airline they are travelling with agrees in their case to contact INZ so boarding permission can be granted as a special case. Ensuring boarding for these people requires further work by the official who is championing their cause, and additional work for border officials who must then override the automatic direction to prevent the person from boarding.

*The current approach is difficult and uncertain for people who meet the exceptions criteria*

13. The current approach requires people to attempt to board a plane en route to New Zealand in order to be considered as an exception. People will only know if they have been considered as an exceptional case once they are checking in, arguably at a very late stage after considerable time and expense. This is problematic for several reasons. For those who do meet the exceptions criteria, they have no assurance until after the travel has been booked, paid for, and are checking in. The current process does not provide access to preventing a traveller to check that they meet the exceptions criteria in advance of travel.
14. In some instances, people who believe they meet the exceptions criteria have sought assistance from various officials (from all levels of Immigration New Zealand, Ministers and

others), in an ad hoc way. This is costly for the system as a whole and does not necessarily lead to greater certainty, as even if they are identified as meeting the high threshold for an exception, the process then relies on the airline staff at check-in to call Border Officers in New Zealand. We understand that due to the overwhelming number of people travelling since the travel restrictions came into effect, airline staff, in some instances, have not followed these protocols, and deserving passengers have not been boarded. The current process does not provide certainty of outcome, even in cases that come to the attention of Immigration officials in advance of travelling.

15. Another problem with this approach is that there is no transparency around the way these decisions are being made other than the high level decisions taken by Ministers with Power to Act that are published on the Immigration website.

s 9(2)(h)

Proactively Released

*The proposed new approach*

24. A more consistent approach with the broader immigration framework is to allow decision-making about exceptions to be done as part of a visa or variation of conditions application assessment (visas decisions made offshore, as opposed to onshore entry permission).
25. Immigration staff will vet these requests and those that are considered likely to meet the high exceptions thresholds will be asked to provide sufficient information to assess them against requirements. Consequently, they will either be issued with a visitor visa or a variation of conditions with a special 'code' that border ICT systems will recognise as being an exception and be given permission to board the flight to New Zealand. The visa or variation will in effect be the technical system's 'green-light' to travel to New Zealand.
26. Allowing consideration of exceptions to take place in a visa or variation of conditions application provides a transparent framework for decision making, rather than requiring border officers to make a discretionary decision under significant time constraints. This will provide greater certainty to those individuals seeking to travel to New Zealand under one of the agreed exceptions. Individuals who are holding a visa granted as a result of this proposed process, or who hold a valid temporary visa with the condition that they have a critical purpose to travel to New Zealand, must be granted entry permission to New Zealand. These changes will also ensure that the decision making takes place in a more legally robust way within a supported consideration process.
27. This process has operational benefits for INZ as requests for an exception to the travel restrictions are more likely to be received in advance of the check-in process. This allows the applicant to provide more relevant information and the immigration officer more time to make a considered decision against the criteria. It also means that most requests for exceptions are able to be channelled to one place.
28. It is proposed that people who meet one of the agreed exceptions to the travel restrictions and who wish to enter New Zealand may be granted a visa with a condition that they specifically fulfil the purpose for which they were granted the exception to the travel restriction. People granted a visa or who have their existing visa varied under this proposal will also have a condition added that they must comply with any instruction from a Medical Officer of Health which relates to a notifiable or quarantinable disease.
29. People granted a visa or variation under the proposed process who then travel to New Zealand and are granted entry permission will be subject to isolation or quarantine on arrival in accordance with Ministry of Health requirements.
30. People who contact INZ and appear to meet the criteria will be invited to apply for a visa with the new condition (if they do not currently hold a visa). Only individuals who are invited to apply will be eligible to submit an application under this category. People who meet one of the agreed exceptions who hold a visa already may have their visa varied to confirm they can travel to New Zealand. People may also be invited to apply following a representation to INZ from a third-party, such as the Ministry of Health, the Associate Minister of Immigration or other authorities, where an immigration officer is satisfied that the exception criteria are likely to be met.

### *Restricted temporary entry instructions*

31. It is proposed that the immigration instructions setting out the criteria to be granted a special visa or a variation of conditions be restricted temporary entry instructions. Restricted temporary entry instructions place limits on the discretion that is normally allowed in temporary entry decision-making, similar to the limits on discretion that exists in residence decision-making. Immigration officers may not grant temporary visas as exceptions to restricted temporary entry instructions. Restricted temporary entry provisions have not previously been used in immigration decision making. The rationale for using restricted temporary entry instructions in this case is that the limits on immigration officer discretion will help signal that only certain, specified situations can be considered under these instructions, and reduce pressure for a wide variety of 'exceptions' to be granted.

### *Process*

32. INZ will be able to quickly make a decision on whether the individual should be invited to apply, and will be able to directly communicate the process and requirements with applicants. INZ will also be able prioritise the request from people that meet the most important exceptions criteria (for example 'essential health workers'). INZ is also investigating a 'silent decline' process for people seeking an exception, whereby only those with compelling cases will be invited to apply for a visa or VOC, and the others not responded to within a set period of time (for example 5 days) will be refused.
33. This process will quickly and efficiently provide certainty to eligible individuals, and concentrate immigration officer resources on applicants most likely to be considered an exception.
34. Under the proposed instructions, a visitor visa may be granted to allow essential travel to New Zealand. The visitor visa will be granted for sufficient time to achieve their critical purpose in New Zealand, for up to six months. However, if applicants have an acceptable standard of health, and are not required to provide medical certificates they may be granted a visitor visa valid for up to 12 months. This is intended to reduce the need for travellers who meet the exceptions criteria to apply for further visas in New Zealand at a time when immigration resources are under pressure. A further visa could be applied for once the holder is in New Zealand if necessary.
35. Essential workers, or essential health workers may be granted a visitor visa that allows them to work for any employer in New Zealand. If they are supported by a Government agency and are key to the COVID-19 response, they may be granted a work visa for up to 24 months. These allowances are intended to support health agencies and other essential services by providing greater certainty about the overseas worker coming to assist with the COVID-19 response.
36. It is also proposed that people invited to apply for either a visitor visa or a VOC are not required to pay the application fee, immigration levy, or the international visitor and conservation levy. These are people who have already been screened to establish that they are likely to meet one of the exceptions criteria, and have compelling reasons to travel to New Zealand. INZ is not easily able to receive fees for these applications. All applicants will be outside New Zealand, and immigration officers would be required to obtain credit-card information over the telephone (as credit card information can not be stored electronically if it is not secured, such as in an email). Over-time, if it was desired, an electronic form and a payment gateway could be created to allow fees to be received legally and efficiently.
37. We recommend that you consider waiving the fees and levies for both visitor visa applications and applications for variations of conditions made under the proposed process and new restricted immigration instructions. We will prepare further advice giving you the option of making a special direction to waive fees and immigration levies for invited

- applicants who meet one of the exceptions criteria. In the meantime immigration officers will consider waiving fees and levies where this appropriate, noting the exceptional circumstances of applicants invited to apply under the proposed instructions.
38. For the avoidance of doubt, travellers who meet one of the agreed exceptions criteria do not necessarily have to use this process (for a visa or a variation of conditions) to travel to New Zealand. Using this process provides them benefits of certainty. These people may continue to attempt to travel to New Zealand by presenting themselves at check-in. In these cases, where an airline refers the traveller to INZ, a border officer will make a case-by-case assessment based on the information available. Where an approval cannot be made, the person seeking travel can then be referred to the proposed process as an alternative.
  39. Proposed additions to immigration instructions are highlighted for ease of reference. Deletions have not been highlighted. Highlighting will not appear in the published versions of the amended Operational Manual.

## Clarification of previous Cabinet decisions

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### *Partners, legal guardians and dependent children*

40. Previous Cabinet decisions allowed for partners, legal guardians or any dependent children who are travelling with a New Zealand citizen to be granted entry permission.
41. Additionally, partners and dependent children of temporary work or student visa holders who hold a visitor visa may be granted entry permission as an exception when the principal work or student visa holder is currently resident in New Zealand. This is consistent with the current immigration instructions that allow this group to be granted entry permission on a case-by-case basis.

### *Categories of persons*

42. The travel restrictions currently group people into three categories. Those who:
  - i. Must be granted entry permission;
  - ii. May be granted entry permission on a case by case basis as an exception;
  - iii. Must be refused entry permission.
43. Within this framework, there are varying degrees of assessment required by officers to determine an individual's eligibility. For example, both New Zealand citizens and Australian citizens whom are ordinarily resident in New Zealand must be granted entry permission. However whether an Australian citizen is ordinarily resident in New Zealand requires more assessment.
44. We therefore propose developing consolidated criteria as part of the application process with more defined guidance material across all categories. This will support officers in the decision making process and result in consistent outcomes.

### *Humanitarian exceptions*

45. On 19 March 2020, it was agreed that exceptions to the travel restrictions could be considered on a case by case basis for certain persons, including individuals with a humanitarian reason to enter New Zealand. Guidance material was drafted to support officers when determining whether to grant entry permission as an exception for humanitarian reasons. Factors to consider include:
  - the applicants connection to New Zealand;
  - the applicants connection to the place they are currently located;

- whether New Zealand is their primary place of residence and their period of absence from New Zealand;
  - whether the applicant has any alternative options;
  - the impact of not granting entry permission to the applicant
  - whether the Ministry of Health or a District Health Board (DHB) supports the provision of any medical treatment that may be required by an applicant
46. Following consultation with the Ministry of Health it is proposed to include in immigration instructions guidance to staff about the need to consider the ability of the New Zealand medical system to provide medical treatment for any person seeking to travel for humanitarian reasons.
47. This will be given effect by accepting referrals from a DHB which confirm that the DHB concerns agrees there is a clinical need for medical treatment, and that they support the person travelling and that they have resources available to provide treatment for the traveller.
48. People seeking to travel to New Zealand who are likely to require medical treatment but who don't have the support of a DHB or the MOH are unlikely to meet the threshold for a humanitarian exception.
49. The factors to consider whether the case is an exceptional circumstance of a humanitarian nature have been included in the immigration instructions. This supports immigration officers to make efficient decisions whilst providing individuals guidance around the factors that will be considered when they make an application on the basis of exceptional circumstances.
50. Since the border restrictions came into effect, INZ have been receiving a significant number of exception requests based on humanitarian reasons. Examples of humanitarian requests that have been approved include:
- the grandmother of an 18 month old child (New Zealand citizen) who was escorting the child to be reunited with the parents who were in New Zealand; and
  - the parent of a New Zealand citizen who has a life threatening medical condition.
51. Examples of requests for an exception on humanitarian grounds that have been declined include:
- a work visa holder who is not employed in an essential role or essential health role seeking to enter New Zealand; and
  - a multiple entry visitor visa holder who had travelled to Fiji.

## Communication

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52. Changes will be communicated to all staff, licensed immigration advisers and the general public through the release of an amendment circular as soon as the new immigration instructions are certified.
53. Information about the process and the strict criteria for any exceptions to the border closure will be published on the INZ website. Information about the change will also be communicated to relevant Government Agencies and Airlines.

**Appendix 1 - Proposed amendments to Restricted Temporary Entry instructions effective on and after the date of Ministerial certification**

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### **E3.27 Restricted temporary entry instructions: Varying the condition of a temporary entry class visa for a critical purpose**

- a. A person with a condition on their temporary visa that the holder carries out a critical purpose while in New Zealand may be granted entry permission despite the border restrictions related to COVID-19 (see Y4.50). This supports government objectives, as set out in H5.1.
- b. A person may express interest in applying for a Variation of Conditions for a critical purpose by using the form provided for the purpose on the Immigration New Zealand website.
- c. An immigration officer must invite a person to apply for a Variation of Conditions for a critical purpose before that person can make an application (H5.10).
- d. A Variation of Conditions application is made by submitting the following to an immigration officer within 1 month of the date of the invitation to apply:
  - i. the completed online or paper form,
  - ii. the appropriate fee,
  - iii. the documentation and evidence requested in the invitation to apply, including evidence of the applicant's critical purpose in New Zealand.
- e. A Variation of Conditions can be granted where an immigration officer is satisfied:
  - i. the applicant has a critical purpose for travelling to and being in New Zealand as set out at E3.27.1 below; and
  - ii. all the other requirements of the visa the person currently holds continue to be met.

**Note:** The instructions in this section are restricted temporary entry instructions. In accordance with section 76(2) of the Immigration Act 2009, immigration officers may not grant a temporary visa as an exception to restricted temporary entry instructions. Restricted temporary entry instructions are defined in section 4 of the Immigration Act 2009:

**Restricted temporary entry instructions** are temporary entry instructions that require, in relation to the type of visa to which the instructions relate, that any decision made on an application for that type of visa, or on an application for entry permission in relation to that type of visa, must be made in terms of the temporary entry instructions applicable at the time the application for the visa was made, and any discretion exercised must be in terms of those instructions

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### **E3.27.1 Critical purposes for being in New Zealand**

The following people are considered to have a critical purpose to be in New Zealand under these instructions:

- a. Essential health workers, as confirmed by the Ministry of Health, and their partners and dependent children (see H5.35.1)
- b. Essential workers and their partner and any dependent children (See H5.35.5)
- c. Citizens of Samoa and Tonga making essential travel to New Zealand
- d. People coming to New Zealand for humanitarian reasons (See H5.35.10)
- e. The partner, dependent child or legal guardian of a New Zealand citizen or permanent resident visa holder who is travelling with that New Zealand citizen or permanent resident.
- f. The partner, dependent child or legal guardian of the holder or a New Zealand resident visa that was granted in New Zealand and who is travelling with that New Zealand resident visa holder.
- g. The partner, dependent child or legal guardian of the holder of a New Zealand resident visa holder where that resident visa holder is arriving in New Zealand for a second or subsequent time as the holder of that visa, and who is travelling with that New Zealand resident visa holder.
- h. People who hold a visitor, work or student visa and:
  - i. are ordinarily resident in New Zealand; and
  - ii. are the partner or dependent child of a work or student visa holder who is in New Zealand.

### **E3.27.5 Conditions on visas varied for a critical purpose**

- a. Any visa varied under these instructions will have the condition that the holder carries out the critical purpose while they are in New Zealand.
- b. A person whose visa is varied under these instructions and who meets the requirements for either an essential health worker (E3.27.1 (a)) or an essential worker (E3.27.1 (b)) may, at the discretion of an immigration officer, also be granted conditions allowing them to work in any occupation for any employer in any location in New Zealand.
- c. Any visa varied under these instructions must also have a condition imposed that the holder complies with any instruction from a Medical Officer of Health which relates to a notifiable or quarantinable disease.
- d. Any visa varied under these instructions for a person who meets the requirements for either a partner or dependent child of a New Zealand citizen or residence class visa holder (E3.27.1 e - g), may be granted conditions requiring them to travel to New Zealand with their New Zealand partner or parent.

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## H5: COVID-19 Support Restricted-Temporary Entry Instructions

### H5.1 Objective

- a. The objective of these instructions is to minimise risks to New Zealand posed by the COVID-19 virus. In order to achieve this objective the New Zealand Government has put in place measures to prevent and prohibit the travel to New Zealand of all persons except:
- i. New Zealand citizens (including those of the Realm of New Zealand countries); and
  - ii. permanent resident visa holders; and
  - iii. resident visa holders who have entered New Zealand as the holder of a resident visa, or were granted a resident visa in New Zealand; and
  - iv. Australian citizens and permanent residents who are ordinarily resident in New Zealand;
  - v. Diplomats accredited to New Zealand and currently resident in New Zealand;
  - vi. Australian citizens and holders of permanent resident visas issued by the Government of Australia transiting New Zealand and whose final destination is Australia;
  - vii. The spouse, legal guardian and minor dependents of Australian citizens and holders of permanent resident visas issued by the Government of Australia who are transiting New Zealand and whose final destination is Australia;
  - viii. People described in Regulation 25 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010.
- b. The five main considerations to achieving this objective are the:
- i. risk to the health of New Zealanders; and
  - ii. risk to the health of Pacific Island Countries; and
  - iii. readiness of Government agencies to operationalise any measures required; and
  - iv. risks to foreign relations; and
  - v. risk of significant adverse economic impacts.
- c. The New Zealand Government acknowledges that there may be extremely limited circumstances where it is appropriate for a person who is not a New Zealand citizen, permanent resident or person returning to New Zealand as a resident, to travel to New Zealand. The COVID-19 restricted immigration instructions aim to achieve this objective by providing certainty about the limited situations where travel to New Zealand for non-New Zealand citizens and residents is allowed while COVID-19 poses a significant threat to New Zealand by granting a:
- i. special visitor visa to persons who do not currently hold a visa; or
  - ii. variation of conditions to persons who already hold a temporary entry class visa (E3.27).
- d. People who do not have a critical purpose for travel to New Zealand will not be invited to apply for a visitor visa or a variation of conditions under these instructions.

#### Note:

The instructions in this chapter are restricted temporary entry instructions. In accordance with section 76(2) of the Immigration Act 2009, Immigration officers may not grant a temporary visa as an exception to restricted temporary entry instructions. Restricted temporary entry instructions are defined in section 4 of the Immigration Act 2009:

**Restricted temporary entry instructions** are temporary entry instructions that require, in relation to the type of visa to which the instructions relate, that any decision made on an application for that type of visa, or on an application for entry permission in relation to that type of visa, must be made in terms of the temporary entry instructions applicable at the time the application for the visa was made, and any discretion exercised must be in terms of those instructions.

## H5.5 Overview

- a. These instructions provide for the grant of a visitor visa or variation of conditions to people who wish to travel to New Zealand while the New Zealand border is effectively closed to all but essential travel.
- b. Only a person who has been invited to apply for a visitor Visa or variation of conditions may make an application under these instructions.
- c. An immigration officer may invite a person to apply if they are satisfied based on the information available that the person meets the requirements to be granted a visitor visa or variation of conditions (see H5.20).
- d. Applications must be made in the prescribed manner within 1 month of an invitation to apply.
- e. A visitor visa or variation of conditions will be approved if an immigration officer is satisfied that the requirements set out at H5.20 for health, character, bona fides, having sufficient funds or sponsorship, and having a critical purpose for travel are met.
- f. If an applicant applying under these instructions is required to work in New Zealand to assist the Government's COVID-19 response, an immigration officer, in their discretion, may grant the applicant a work visa for an appropriate duration and with appropriate conditions.

Proactively Released

#### **H5.10 Expression of interest and Invitation to Apply**

- a. A person may express interest in applying under these instructions for a visitor visa or variation of conditions by using the form provided for the purpose on the Immigration New Zealand website.
- b. An immigration officer may invite a person to apply for a visitor visa or variation of conditions if they are satisfied that:
  - i. the information available does not indicate any health, character or bona fide issues that would prevent any person who will be included in the application to be granted a visitor visa; and
  - ii. the people who will be included in the application are likely to meet funds or sponsorship and onwards travel requirements; and
  - iii. the principal applicant has a critical purpose for travelling to New Zealand.

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**H5.15 Making an application for a visa or variation of conditions**

- a. A person may only apply for a visitor visa or variation of conditions under these instructions if they are invited to do so.
- b. An application must be made within 1 month of the date of the invitation to apply.
- c. Applications for a visitor visa must be made in the prescribed manner.

Proactively Released

## **H5.20 Determining an application**

A Visitor Visa may be granted if an immigration officer is satisfied that the all applicants included in the application:

- a. meet health and character requirements for temporary entry (A4 and A5); and
- b. are bona fide (E5) applicants for a temporary entry class visa; and
- c. meet funds or sponsorship requirements for visitors (V2.20); and
- d. meet onward travel requirements for visitors (V2.25); and
- e. have a critical purpose for travel to New Zealand as described in H5.20.1.

### **H5.20.1 Critical purpose for travelling to New Zealand**

The following people are considered to have a critical purpose for travelling to New Zealand under these instructions:

- a. Essential health workers as confirmed by the Ministry of Health, and their partners and dependent children (H5.25.1).
- b. Essential workers, and their partners and dependent children (H5.25.5).
- c. Citizens of Samoa and Tonga making essential travel to New Zealand.
- d. People who have humanitarian reasons for travel to New Zealand (H5.25.10).
- e. The partner, dependent child or legal guardian of a New Zealand citizen or permanent resident visa holder and who is travelling with that New Zealand citizen or permanent resident.
- f. The partner, dependent child or legal guardian of the holder or a New Zealand resident visa that was granted in New Zealand and who is travelling with that New Zealand resident visa holder.
- g. The partner, dependent child or legal guardian of the holder of a New Zealand resident visa holder where that resident visa holder is arriving in New Zealand for a second or subsequent time as the holder of that visa, and who is travelling with that New Zealand resident visa holder.
- h. People who hold a visitor, work or student visa and:
  - i. are ordinarily resident in New Zealand; and
  - ii. are the partner or dependent child of a work or student visa holder who is in New Zealand.

### **H5.20.5 Family relationships**

- a. A person will be considered to be the partner of a New Zealand citizen, or permanent resident visa holder, or resident visa holder, or Australian citizen or permanent resident who is ordinarily resident in New Zealand, if they meet the requirements for partners specified in E4.1.
- b. A person will be considered to be a dependent child of a New Zealand citizen or permanent resident visa holder, or resident visa holder, or Australian citizen or permanent resident who is ordinarily resident in New Zealand, if they meet the requirements for dependent children specified in E4.1.
- c. An immigration officer must be satisfied that a person is a partner or dependent child of a New Zealand citizen or visa holder, or Australian citizen or permanent resident who is ordinarily resident in New Zealand, before a visa can be granted to a person for a critical purpose based on that relationship.

**Note:** Where a person is applying as the partner or dependent child of a New Zealand citizen or visa holder, or Australian citizen or permanent resident who is ordinarily resident in New Zealand, evidence of the relationship must be provided if Immigration New Zealand has not established the relationship in a previous visa application.

## **H5.25 Definitions**

### **H5.25.1 Essential health workers**

- a. An essential health worker is a person who will work in New Zealand in a job or occupation described on the Immigration New Zealand website as an essential health worker.
- b. The jobs and occupations considered as essential health workers are agreed to by the Ministry of Health and the Ministry of Business, Innovation and Employment.

### **H5.25.5 Essential workers**

Essential workers are considered by the COVID-19 All of Government Officials group as critical to delivering the response to COVID-19 and/or maintaining critical infrastructure, and agreed to by the Minister of Immigration and either Ministers with Power to Act or by Cabinet.

### **H5.25.10 Humanitarian reasons**

- a. Humanitarian reasons are exceptional circumstances of a humanitarian nature that make it strongly desirable for the applicant to travel and enter New Zealand.
- b. When considering whether a person has humanitarian reasons for travelling to New Zealand, immigration officers must consider the purpose of these instructions and the strong public interest in protecting the health of New Zealander and supporting Government agencies response to the risks posed by the COVID-19 situation.
- c. Relevant factors when considering if humanitarian reasons justify the grant of a visa under these instructions include:
  - i. the applicant's connection to New Zealand
  - ii. the applicant's connection to the place they are currently located
  - iii. whether New Zealand is their primary place of residence, and their period of absence from New Zealand
  - iv. whether the applicant has any alternative options
  - v. the impact of not granting a visa and entry permission to the applicant,
  - vi. whether the Ministry of Health or a District Health Board supports the provision of any medical treatment that may be required by an applicant.

Proactively Released

### **H5.30 Currency and conditions**

- a. A visitor visa may be granted with sufficient duration to achieve their critical purpose in New Zealand, up to 6 months.
- b. Despite (a) above, where a person is not required by A4.25 to provide Medical or Chest X-ray Certificates, they may be granted a visitor visa for a maximum period of 12 months.
- c. A visitor visa must be granted with the condition that the holder carries out the critical purpose that allowed the grant of this visa while they are in New Zealand.
- d. A person granted a visitor visa who meets requirements for either an essential health worker (H2.25.1 (a) (i), or an essential worker (H2.25.1 (a) (i), may be granted conditions allowing them to work in any occupation for any employer in any location in New Zealand.
- e. A person granted a visitor visa who meets the requirement for either a partner or dependent child of a New Zealand citizen or residence class visa holder (H5.25.1 e -g), may be granted conditions requiring them to travel to New Zealand with their New Zealand partner or parent.

Proactively Released

##### **H5.35 Grant of work visa in special cases**

- a. Where a person meets requirements for either an essential health worker (H2.25.1 (a), or an essential worker (H2.25.1 (b)) and where the application is supported by a Government agency with a role in operationalising any measures required to respond to the COVID-19 situation, an immigration officer may grant the principal applicant a work visa for up to 24 months.
- b. Where a work visa is granted under these instructions the holder may be granted conditions that allow them to work in any occupation for any employer in any location in New Zealand.
- c. Where an applicant for a visitor visa is granted a work visa under these instructions that visa must be granted with the condition that the holder carries out the critical reason that allowed the grant of this visa while they are in New Zealand.

Proactively Released

**RESTRICTED TEMPORARY ENTRY INSTRUCTIONS**

**MINISTERIAL CERTIFICATE**

I certify, in accordance with section 22 of the Immigration Act 2009, that the amendments contained in Appendix 1 of the submission dated 27 March 2020 are part of Restricted Temporary Entry instructions on and after the date of signature.

Hon Iain Lees-Galloway  
Minister of Immigration

(day)      (month)      (year)

Proactively Released

**Appendix 2 - Proposed amendments to Border Entry instructions  
effective on and after the date of Ministerial certification**

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Proactively Released

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

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

These instructions are valid until 11:59pm 31 March 2020.

- a. Entry permission must be refused to any person, except a person listed in Y4.50(b), who is not otherwise dealt with under Y4.1 and who is:
  - i. the holder of a temporary entry class visa (except as provided for by (c) below)
  - ii. a person described under Schedule 2 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 (visa-waiver travellers, including Australians)
  - iii. the holder of a residence class visa whose visa was granted offshore and who is arriving in New Zealand for the first time.
- b. The following persons must be granted entry permission:
  - i. Those **New Zealand residence class visa holders** listed in Y3.10(a)
  - ii. The partner, legal guardian or any dependent children who are travelling with a New Zealand Citizen or a **New Zealand residence class visa holder** listed at Y3.10(a)
  - iii. Australian citizens or a person who holds a current permanent residence visa (including a resident return visa) issued by the Government of Australia, where New Zealand is their primary place of established residence
  - iv. Diplomats accredited to New Zealand and currently resident in New Zealand.
- c. A person may be granted entry permission if they are the holder of a temporary entry visa which either:
  - i. was granted under the **COVID-19 Support Restricted Temporary Entry Instructions**; or
  - ii. has a condition that the holder carries out a critical purpose while they are in New Zealand.
- d. A person subject to (a) above may still be granted entry permission by an immigration officer as an exception to instructions (see Y4.45), for reasons including but not limited to:
  - i. Humanitarian reasons
  - ii. Essential health workers as confirmed by the Ministry of Health
  - iii. Other essential workers as defined by the New Zealand Government
  - iv. Citizens of Samoa and Tonga for essential travel to New Zealand
  - v. People who hold a visitor, work or student visa and:
    - o are ordinarily resident in New Zealand; and
    - o are the partner or dependent child of a work or student visa holder who is in New Zealand.

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Notes:

- For the avoidance of doubt
  - New Zealand citizens are not subject to this instruction
  - people subject to regulation 25 of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 are deemed to be granted entry permission.
- 'Commercial craft' and 'craft' have the same meaning as section 4 of the Immigration Act 2009

**BORDER ENTRY INSTRUCTIONS**

**MINISTERIAL CERTIFICATE**

I certify, in accordance with section 22 of the Immigration Act 2009, that the amendments contained in Appendix 2 of the submission dated 27 March 2020 are part of Border Entry instructions on and after the date of signature.

Hon Iain Lees-Galloway  
Minister of Immigration

(day)      (month)      (year)

Proactively Released

**Appendix 3 - Proposed amendments to Temporary Entry instructions effective on and after the date of Ministerial certification**

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Proactively Released

### **E3.26 Varying the conditions of temporary entry class visas**

*See also Immigration Act 2009 s 52*

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

Proactively Released

**TEMPORARY ENTRY INSTRUCTIONS**

**MINISTERIAL CERTIFICATE**

I certify, in accordance with section 22 of the Immigration Act 2009, that the amendments contained in Appendix 3 of the submission dated 27 March 2020 are part of Temporary Entry instructions on and after the date of signature.

Hon Iain Lees-Galloway  
Minister of Immigration

—  
(day)

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(month)