



3 July 2020

**Immigration New Zealand Operational Manual: Amendment Circular No. 2020-26**

**To: All Manual Holders**

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

**Introduction**

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

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

**Note**

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

Information about these changes is available on our website [www.immigration.govt.nz](http://www.immigration.govt.nz).

## **Summary of contents**

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

- The description of changes section contains a summary of the changes to operational instructions.
- Appendix 1 contains amended operational instructions effective on and after 22 June 2020.

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

## Description of changes

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**Delegation of Minister of Immigration's decision making powers under the Immigration Act 2009**

***A15.5 Delegation of Powers to Ministry of Business, Innovation and Employment – Immigration New Zealand***

***A15.15 Delegation of Powers to Delegated Decision Makers of the Ministry of Business, Innovation and Employment – Immigration New Zealand***

Changes have been made to operational instructions to reflect the Minister of Immigration's agreement to:

- Delegate to immigration officers the powers to:
  - waive, in an any individual case, the requirement to hold a transit visa
  - suspend, in an any individual case, a transit visa waiver for whom that waiver would normally apply as per regulations
  - grant a permanent resident visa as an exception to instructions, in cases where the individual has previously held a resident visa
  
- Delegate to Delegated Decision Makers of the Ministry of Business, Innovation and Employment the powers to:
  - grant a visa in the absence of an application to a person offshore or to a temporary entry class visa holder who is onshore,
  - determine that a residence class visa holder's circumstances are such that they are liable for deportation, with respect to non-automatic deportation liability cases.

Appendix 1 contains amended operational instructions effective on and after 22 June 2020.

**Appendix 1 - Amendments to Operational instructions effective on and after 22 June 2020**

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## **A15.5 Delegation of Powers: Minister of Immigration to Ministry of Business, Innovation and Employment – Immigration New Zealand**

PURSUANT to section 380 of the Immigration Act 2009 (the Act) and effective from 22 June 2020, I Iain Lees-Galloway, Minister of Immigration:

1. REVOKE the Instrument of Delegation dated 23<sup>rd</sup> day of December 2019 previously made under that section;
2. DELEGATE, to each immigration officer who is the holder (or is acting as the holder) from time to time of any office or position specified in each of the Schedules to this Instrument, and is suitably trained and qualified, the powers under the Immigration Act 2009 specified in relation to that office or position in the relevant Schedule, but subject to any conditions listed in those Schedules; and
3. DELEGATE to every immigration officer the power to take the practical steps necessary under that Act to implement a decision taken by another immigration officer pursuant to this Instrument of Delegation. Any person who exercises any power pursuant to this Instrument of Delegation shall do so in accordance with the Government policy and Departmental instructions that are current at the time, as set out from time to time in the Immigration New Zealand Operational Manual and circular instructions on Immigration.

Dated at Wellington this 22 day of June 2020

Iain Francis Lees-Galloway  
Minister of Immigration

### **Schedule 1**

#### *Office or Position:*

1. Chief Executive, Ministry of Business, Innovation and Employment
2. Deputy Chief Executive – Immigration New Zealand, Ministry of Business, Innovation and Employment

#### *Powers Delegated:*

1. All those powers set out in Schedules 2, 3 and 4 of this Instrument of Delegation without limitation or subject to any conditions;
2. Specifying an international organisation under s4, by notice in the Gazette, as an organisation whose travel documents will be accepted as certificates of identity.

### **Schedule 2**

#### *Office or Position:*

1. 3rd Tier Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment
2. 4th Tier Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment
3. 5th Tier Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment
4. 6th Tier Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment
5. Immigration Manager - Immigration New Zealand, Ministry of Business, Innovation and Employment

#### *Powers Delegated:*

1. All those powers set out in Schedules 3 and 4 of this Instrument of Delegation;
2. Giving a special direction under s17(1)(a) of the Act authorising a residence class visa to be granted to a person to whom s15 or s16 applies;
3. The power under s79(5) of the Act to grant a temporary visa to a person prohibited from applying for a temporary visa under s79(4);
4. The power under s180(3) of the Act to reduce or waive any debt due by a person under s180(1) (this power is delegated to managers in the Compliance, Risk and Intelligence Services Branch only);

5. Providing by special direction under s395(2) of the Act for an exemption from or refund of any prescribed fee or charge in whole or in part;
6. Providing by special direction under s396(9) of the Act for an exemption from or refund of any bond, in whole or in part;
7. The power under s398(1) and (3) of the Act to provide funds for the costs of deportation or repatriation from New Zealand (this power is delegated to managers in the Compliance, Risk and Intelligence Services Branch only);
8. Giving a special direction under s412(2) of the Act, relating to existing applications for visas and permits, that s412(1) not apply;
9. The power conferred by regulation 26(5) (where applicable pursuant to s399(8) of the Act and pursuant to the transitional provision of Schedule 1AA of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive (by way of special direction) the requirement to pay the migrant levy;
10. The power conferred by regulation 34(1)(a) and (f) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction:
  - a. one or more of the requirements for applying for a visa (whether at an immigration control area or otherwise);
  - b. any matter relating to an endorsement of New Zealand citizenship in a New Zealand citizen's foreign passport;
11. The power to give a special direction under s51(3) of the Act to vary the conditions of a resident visa, as an exception to instructions;
12. The power under s72(3) of the Act to grant a second or subsequent resident visa as an exception to instructions;
13. The power under s72(3) of the Act to grant a permanent resident visa as an exception to instructions, to a person who has held a resident visa in New Zealand;
14. The power under s399(3A) of the Act to provide by special direction for an exemption from or refund of any immigration levy, in whole or in part;
15. The power under s399A(4) of the Act to provide by special direction for an exemption from or refund of the international visitor conservation and tourism levy, in whole or in part;
16. The power conferred by regulation 26AAC of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to accept cash payment of prescribed fees by special direction.

### **Schedule 3**

#### *Office or Position:*

1. Immigration officer, technical advisor
2. Immigration officer

#### *Powers Delegated:*

1. Any of the powers set out below which have been assigned to an individual by the Chief Executive;
2. Giving a special direction under s17(1)(a) of the Act authorising:
  - a. a temporary entry class visa and/or entry permission; or
  - b. a transit visa
 to be granted to a person to whom s15 or s16 of the Act applies;
3. The power under s50(3) of the Act to do either of the things in subsection (2)(b), that is to vary or cancel conditions on a resident visa, by agreement with the visa holder;
4. The power under s61 of the Act to grant or refuse a visa of any type to a person who is unlawfully in New Zealand and is not a person in respect of whom a deportation order is in force;
5. The power under s69(2)(d) of the Act to suspend, in any individual case, a waiver of the requirement to hold a visa permitting travel to New Zealand;
6. The power under s86(4A)(b) of the Act to suspend, in any individual case, a waiver (made by regulations) of the requirement to hold a transit visa.
7. The power conferred by regulation 23(2) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to require, by special direction, that regulations apply to applications for visas not otherwise provided on the approved form;
8. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, the requirements in regulation 5(2)(d)(iii), to the extent that it relates to immigration instruction requirements to produce a police or similar certificate;

9. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, requirements specified in regulation 5(2) in relation to residence class visa applications lodged:
  - a. under the Refugee Family Support category;
  - b. under the victims of family violence category;
  - c. by persons recognised as refugees and protected persons in New Zealand.

This delegation only applies to the extent specified by immigration instructions;

10. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, requirements specified in regulation 5(2) in relation to residence class visa applications lodged under the Skilled Migrant Category;
11. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, the requirements in regulation 10(2)(e) for particular documents, information and /or evidence to be tendered with the approved application form, in respect of applications made for temporary entry class visas;
12. The power conferred by regulation 34(1)(a) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, requirements specified in regulations 10(2), in relation to temporary entry class visa applications lodged:
  - a. under Special work visas for victims of family violence category;
  - b. by persons recognised as refugees and protected persons in New Zealand.

This delegation only applies to the extent specified by immigration instructions;

13. The power conferred by regulation 34(1)(b), (c) and (d) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, one or more of the requirements for:
  - a. applying for a second or subsequent resident visa;
  - b. varying conditions of travel for a resident visa;
  - c. notifying an expression of interest in applying for a residence class visa.

#### **Schedule 4**

##### *Office or Position:*

1. Immigration officer at an immigration control area, as defined under s382, or any other port of entry
2. Immigration officer who holds the position of compliance officer

##### *Powers Delegated:*

1. Any of the powers set out below which have been assigned to an individual by the Chief Executive;
2. The power to make decisions under s16 of the Act that certain persons are not entitled to the grant of a visa and/or entry permission;
3. Giving a special direction under s17(1)(a) of the Act authorising a residence class visa to be granted to a person who applies for a residence class visa on arrival, and to whom s15 or s16 applies;
4. The power under s69(2)(c) of the Act to waive, in any individual case, the requirement to hold a visa permitting travel to New Zealand;
5. **The power under s86(4A)(a) of the Act to waive, in any individual case, the requirement to hold a transit visa.**
6. The power to give a special direction under s101(4) of the Act in relation to the responsibilities of carriers and persons in charge of craft en route to or arriving in New Zealand;
7. The power to give a special direction under s103(1) of the Act in relation to persons arriving in New Zealand;
8. The power to give a special direction under s108(4)(b) or (5)(b) of the Act to impose, vary or cancel the conditions of a resident visa granted outside New Zealand;
9. The power to give a special direction under s119(1) of the Act in relation to persons leaving New Zealand.
10. Determining under s156(1)(b) of the Act that a person holds a temporary entry class visa under a false identity;
11. Determining under s157(1) of the Act that there is sufficient reason to deport a temporary entry class visa holder;
12. Determining under s157(3) of the Act that a person is an excluded person for the purpose of section 157(2);
13. The power under s172 of the Act, with due regard to submissions (if applicable), to cancel liability for deportation for a temporary entry class visa holder;
14. The power under s182(1) of the Act to reduce or remove a non-permanent period of prohibition on entry in relation to a person in regards to their application for visa or entry permission;

15. The power conferred by regulation 34(1)(a), (b) and (e) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, one or more of the requirements for applying for:
  - a. a visa or for entry permission, to the extent specified by immigration instructions;
  - b. a second or subsequent resident visa at an immigration control area;
16. The power conferred by regulation 34(1)(da) of the Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 to waive, by special direction, one or more of the requirements for requesting or holding an ETA.



## **A15.15 Delegation of Powers: Minister of Immigration to Delegated Decision Makers of the Ministry of Business, Innovation and Employment – Immigration New Zealand**

PURSUANT to section 380 of the Immigration Act 2009 (the Act) and effective from **22 June 2020** I, Iain Lees-Galloway, Minister of Immigration, hereby:

1. REVOKE the Instrument of Delegation dated **23rd** day of December 2019 previously made under that section with the title *Delegation of Powers to Delegated Decision Makers of the Ministry of Business, Innovation and Employment – Immigration New Zealand*;
2. DELEGATE the powers in the Act that are specified below to the immigration officers specified below (known as Delegated Decision Makers (“DDMs”));
3. DELEGATE to every immigration officer the power to take the practical steps necessary under that Act to implement a decision taken by a DDM pursuant to this Instrument. Any person who exercises any power pursuant to this Instrument shall do so in accordance with
  - a. any applicable immigration instructions (s22 of the Act); and
  - b. any applicable general instructions to immigration officers from the chief executive (s26 (4) of the Act).
4. For the avoidance of doubt, this Instrument is additional to, and does not revoke, any other Instrument aside from that revoked by paragraph 1 of this Instrument.

Dated at Wellington this **22** day of **June 2020**

Iain Lees-Galloway  
Minister of Immigration

### **Specified Delegated Decision Makers**

Alejandra Mercado  
Michael Carley  
Steve Cantlon  
Elizabeth Cantrick  
Katherine Macleod  
Nicola Scotland  
Gordon Barlow

### **Additional Powers Delegated:**

1. All those powers set out in Schedules 2, 3 and 4 of the Instrument of Delegation **named *Delegation of Powers: Minister of Immigration to Ministry of Business, Innovation and Employment – Immigration New Zealand*** which I signed and **became** effective on **22 June 2020**;
2. On granting a resident visa as an exception to residence instructions, the power under s50(1) to impose conditions in addition to those specified in the applicable residence instructions (if any); or to vary or waive conditions that would otherwise apply to a visa of that type;
3. Following the grant of a resident visa, the power under s50(2) to, by special direction, impose further conditions whether or not the conditions are specified in the applicable residence instructions (if any); or vary or cancel conditions that would otherwise apply to the visa or were imposed under s50(1);
4. **The power under s61A(1) to, by special direction, grant a visa of any type to a person who is outside New Zealand or is in New Zealand and holds a temporary entry class visa.**
5. The power under s71(5) to grant a residence class visa, as a matter of absolute discretion, to a person to whom s71(4) of the Act applies;
6. The power under s72(2) to give a special direction allowing a residence application received by an immigration officer in the first instance to be considered by the Minister;
7. The power under s72(3) to grant a residence class visa as an exception to residence instructions;
8. The power under s94(4) to, by special direction, issue an invitation to apply for a visa to a person whether or not the person has expressed his or her interest in the manner required by the Act or immigration instructions;
9. **The power to determine that a residence class visa holder is liable for deportation under ss156(1)(b), 158(1)(b), 159, or 160;**

10. The power under s172(1) to, as a matter of absolute discretion, cancel a person's liability for deportation where deportation liability arises under ss156(1), 158(1), 159, 160(1), 161, or 162;
11. The power under s172 (2) to, as a matter of absolute discretion, suspend a residence class visa holder's liability for deportation where deportation liability arises under ss156(1), 158(1), 159, 160(1), 161, or 162. Any suspension of liability may be set for a period not exceeding 5 years, and may be made subject to any conditions which are to be stated in the written notice of suspension.
12. The power under s172(3) to reactivate a person's liability for deportation if the person fails to comply with the conditions imposed by a DDM under s172 (2) (b).
13. The power under s174(2) to determine that a person has met the conditions imposed by the Minister under s172(2) for the period of the suspension, to cancel that person's liability for deportation, and notify the person and the Tribunal of that fact.
14. The power under s182 to reduce or remove a period of prohibition on entry for those who have a permanent prohibition on re-entry to New Zealand under ss179 due to being deported from New Zealand following deportation liability arising under ss156, 158, 160, 161 and 162.
15. The power under s213 (5) to determine that a person has met any conditions imposed by the Tribunal under s212 (1) for the duration of the suspension, cancel the person's liability for deportation, and notify the Tribunal accordingly.