



BRIEFING

Immigration New Zealand Operational Manual: Amendments Requiring Ministerial Certification To Vary The Visa Conditions Of Workers In Essential Services

Date:	5 June 2020	Priority:	High
Security classification:	In Confidence	Tracking number:	BR 3438 19-20

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	Agree to the recommendations	10 June 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	04 896 5196	9(2)(a)	✓
Amardeep Bal	Immigration Manager	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☐ Withdrawn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

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Date:	5 June 2020	Priority:	High
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Purpose

We seek your agreement to certify amendments to immigration instructions to enable Immigration New Zealand to decline requests for short term variations of conditions for workers in essential services, five weeks after a shift to Level 2 or below. Variations of conditions only apply until six weeks after a shift to level 2 or below and existing immigration instructions do not currently specify the timeframe for accepting requests. A minor change to emphasise the short term nature of the variations is also proposed.

We also seek your agreement to remove the instructions effective 25 June 2020 (six weeks after the shift to Level 2).

Recommended action

- a **Agree** to certify changes to immigration instructions to:
- Specify that requests for short term variations to visa conditions will be considered if made within five weeks of a shift to level 2 or below.
 - Allow for a minor heading change to these instructions to emphasise the short term nature of the variations.
 - Remove the provision in immigration instructions which relates to short term variations to the conditions of visas for essential business during the Covid-19 response period, effective 25 June 2020 (6 weeks after a shift to level 2 or below).

☒ **Agree** ☐ **Disagree**

- b **Note** that the visa conditions will continue to be valid for six weeks after a shift to level 2 or below.

☒ **Noted**

- c **Note** that the proposed changes to Temporary Entry instructions attached at Appendix 1 and Appendix 2 have been reviewed and agreed by the General Manager, Enablement

Noted



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

4 /6 /2020



Hon Iain Lees-Galloway
Minister of Immigration

09/06/2020

..... / /

Background

1. You previously agreed [BR 2974 19-20] to certify changes to immigration instructions to allow immigration officers to temporarily vary conditions on student and work visas for migrants employed in essential services, to support the delivery of essential goods and services while New Zealand is at Alert Level 4 or 3 (and for up to 6 weeks following).
2. New Zealand moved to Alert Level 2 at 11.59pm on Wednesday 13 May 2020 and therefore any variations of conditions granted under these instructions apply until six weeks after the shift to level 2 (11.59pm on Wednesday 24 June 2020).

Proposed Amendments to Temporary Entry Instructions

3. We propose that Immigration New Zealand (INZ) continues to consider requests for variations up to five weeks from the shift to level 2 or below. This will mean that Immigration New Zealand will cease to accept requests after Thursday 18 June 2020 due to the variation only applying until six weeks after the shift to level 2 (11.59pm, Wednesday 24 June 2020).
4. As at 11:59pm, Wednesday 24 June, visa conditions of those granted a variation of condition will revert back to original visa conditions, and if the worker wishes to continue in their new role, they will need to apply for a new visa or a substantive variation of conditions as appropriate.
5. We are also proposing to further emphasise the short-term duration of these variations through a small change in the heading of these instructions.
6. INZ is also seeking your agreement to remove the immigration instructions from 25 June 2020, given that variations under these instructions apply for 6 weeks from a shift to level 2 or below.

Movement between levels

7. Immigration instructions refer to a “shift to level 2 or below” which provides flexibility in the event that New Zealand moves to Level 1 within the five week mark specified for receiving applications, or the six week mark specified for the duration of the visa conditions.
8. Further advice would be provided if there were a shift back to Level 3 or Level 4, although the current immigration instructions enable INZ to continue to accept and approve requests.

Next steps

9. If you agree to the proposed changes then you are invited to certify the changes to immigration instructions at Appendix 1 and Appendix 2.
10. Proposed additions to immigration instructions are highlighted for ease of reference. Removals are not highlighted or otherwise included in the Appendices as you are certifying the version of instructions that will become effective. The amended instructions in Appendix 2 effective 25 June are therefore a ‘clean’ version of the instructions with all references to the short-term VOC for Essential workers removed. Highlighting will not appear in the published versions of the amended Operational Manual.

Communications

11. Changes will be communicated to all staff, licensed immigration advisers and the general public through the release of an amendment circular as soon as possible after the new immigration instructions are certified.
12. INZ has emailed migrants who have been granted a short term variation reminding them that their visa conditions will revert back to the original conditions at 11.59pm on 24 June.

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

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](#).
- e. Despite (a) to (d) above, an immigration officer may grant a variation of conditions to temporary entry class visa holders without an application being submitted for the purpose of supporting New Zealand's response to COVID-19, in accordance with E3.26.15 below.

E3.26.1 Varying the conditions of work visas

E3.26.1.1 Varying Essential Skills work visa conditions

- a. Essential Skills work visa holders seeking to change occupation or place of employment will not be granted a variation of conditions and must instead apply for a new work visa, unless:
- i. their new occupation is listed on an Essential Skills in Demand list; and
 - ii. they meet the requirements of the list.

- iii. Essential Skills work visa holders seeking to change employment to a skill-band lower than that of their current employment ([WK3.5.1](#)), will not be granted a variation of conditions, and must instead apply for a new work visa.

E3.26.1.5 Varying Specific Purpose or Event visa conditions

a. Holders of a work visa granted under [WS2](#) as players or professional sports coaches may apply for a variation of conditions of their work visa to undertake additional employment.

A variation of conditions may be granted if:

- i. the terms of the existing employment have been met, and will continue to be met; and either
- ii. the secondary employment is offered by the sports club or a company involved in the sport and the position is offered solely to this particular player or coach; or
- iii. the secondary employment is offered by an employer other than the sports club or a company involved in the sport and an immigration officer is satisfied that there are no New Zealand citizens or residence class visa holders available to be employed in the position (see [WK3.10](#)).

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

a. Holders of a work visa granted under [WR1](#) (Talent Accredited Employers) Work Instructions) may apply for a variation of conditions of their work visa to change employers. A variation of conditions may be granted:

- i. to undertake employment for another accredited employer; or
- ii. to undertake employment for another employer who is not an accredited employer if their employment is no longer available due to reasons beyond the visa holder's control. When assessing such applications for a variation of conditions, immigration officers will consider all the circumstances of the applicant and the reasons for which the former accredited employer did not continue employment or the former employer's accreditation was not renewed or rescinded.

b. In order to be granted a variation of conditions under (a) above:

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

Notes:

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

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

E3.26.5 Varying the conditions of visitor visas

a. Holders of visitor visas granted under [V3.100](#) Guardians accompanying students to New Zealand may only be granted a variation of conditions for part time work or part time study between the hours 9:30am and 2:30pm Monday to Friday (inclusive) (see [V3.100.35](#)).

b. Holders of visitor visas may be granted a variation of conditions for a duration of six weeks to undertake seasonal work (planting, maintaining, harvesting and packing crops) in any region where the Ministry of Social Development has identified a shortage of seasonal labour and for any employer in the horticulture or viticulture industries, provided the applicant has not been granted a variation of conditions for this purpose since their most recent entry to New Zealand.

E3.26.10 Varying the conditions of student visas

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

E3.26.15 Short term variations to the conditions of student and work visas to support essential businesses during the Covid-19 response period

a. The purpose of these instructions is to support employers to deliver essential goods and services as part of New Zealand's response to the COVID-19 pandemic.

b. An immigration officer may grant a variation of conditions to a student or work visa subject to receiving a request from an employer **within five weeks of a shift to Level 2 or below** which includes a declaration confirming that:

- i. The employer was operating during Alert Level 4; and
- ii. The employer meets the criteria for a business providing an essential service as published on the www.Covid-19.govt.nz website
- iii. The worker has agreed to be redeployed and that minimum employment standards will be adhered to (including where applicable a new written employment agreement).

c. If granted, any variation of conditions will apply only while New Zealand is at Alert Level 3 or 4 on the COVID-19 Alert System and for a period of six weeks after a shift to Level 2 or below.

d. An immigration officer must notify the visa holder of the new conditions in writing.

e. An immigration officer may refuse a request to grant a variation to conditions (without providing a reason), where:

- i. there are significant concerns about the individual visa holder (for example any relevant health or character concerns); or
- ii. there is evidence or significant concerns that the employer does not meet the general requirements of [W2.10.5](#); or
- iii. there is sufficient reason to doubt that the declarations made by the employer as required by (b) above are true.

E3.26.15.1 Varying work visa conditions

- a. People holding work visas that specify their occupation, employer and region of employment may be granted a variation to either their employer or their occupation under these instructions (but not both).
- b. The occupation may be varied to state that the visa holder can work in 'any occupation' for the employer specified on their visa.
- c. The employer on a visa may be varied if the new employer meets the requirements set out in E3.26.15 above, and there is no change required to the occupation of the visa holder.

Note: Due to public health considerations, variation requests to change regions of employment may not be considered under these instructions

E3.26.15.5 Varying student visa conditions

- a. People holding student visas that specify they may only work up to 20 hours during term time can be granted a variation to allow them to work full-time, provided the request is made by an employer who meets the requirements of E3.26.15 above.
- b. The student visa holder must have been employed by the employer specified in (a) above on 16 April 2020.
- c. The conditions of the student visa may be varied to state that the holder can work full-time for the specified essential business employer.

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 5 June 2020 are part of Temporary Entry instructions on and after the date of signing.



Hon Iain Lees-Galloway
Minister of Immigration

09 June 2020
(day) (month) (year)

Appendix 2 – Proposed amendments to Temporary Entry instructions effective 25 June 2020

E3.26 Varying the conditions of temporary entry class visas

See also Immigration Act 2009 s 52

a. Holders of temporary entry class visas should apply for a variation of the conditions of their visa if:

- i. they wish to work and do not have a visa that allows work in New Zealand; or
- ii. they hold a work or visitor visa and wish to undertake a programme of study in New Zealand for longer than 3 months (unless [U2.5](#) applies); or
- iii. they hold a work visa limited by conditions and wish to change employers, and/or occupation and/or the place of employment; or
- iv. despite the ban on travel to New Zealand by temporary entry class visa holders in response to COVID-19, they have a critical purpose to carry-out in New Zealand ([E3.27](#)).

b. Immigration officers may grant a variation of conditions for cases (a) (i)– (iii) above) provided that the applicant completes an Application for Variation of Conditions and produces:

- i. the appropriate fee;
- ii. a valid passport (or a certified copy) or travel document (or a certified copy);
- iii. documents which support the requested variation, such as:
- iv. an offer of employment (see [W2.10.10](#)); or
- v. an offer of place at a suitable education provider (see [U3.5](#)), and evidence of tuition fee payment or exemption (see [U3.10](#)); and
- vi. any other documents or information requested by the immigration officer.

c. A variation of conditions will only be granted where the varied conditions still meet the objectives of the instructions which the visa was granted under.

d. A variation of conditions to work for a specific employer will only be granted where the employer meets requirements at [W2.10.5](#), [W2.10.6](#) and [W2.10.15](#).

e. Despite (a) to (d) above, an immigration officer may grant a variation of conditions to temporary entry class visa holders without an application being submitted for the purpose of supporting New Zealand's response to COVID-19, in accordance with E3.26.15 below.

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b. In order to be granted a variation of conditions under (a) above:

- i. the base salary offered must be no less than the base salary that was required at the time the initial work visa application was made; and
- ii. the offer of employment must meet the requirements of [WR1.10](#); and
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employer in the horticulture or viticulture industries, provided the applicant has not been granted a variation of conditions for this purpose since their most recent entry to New Zealand.

E3.26.10 Varying the conditions of student visas

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TEMPORARY 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 5 June 2020 are part of Temporary Entry instructions effective 25 June 2020.



Hon Iain Lees-Galloway
Minister of Immigration

09 June 2020
(day) (month) (year)