



## BRIEFING

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

Date:	15 April 2020	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	BR 2974 19 20

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	Agree to the recommendations	15 April 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)	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☐ Withdrawn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 Vary The Visa Conditions Of Workers In Essential Services

<b>Date:</b>	15 April 2020	<b>Priority:</b>	Urgent
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### Purpose

This paper seeks that you agree to and certify proposed changes to immigration instructions to allow immigration officers to vary conditions on work and student visas to support employers to deliver essential goods and services while New Zealand is at Alert Level 3 or 4.

These proposed changes give effect to your earlier decision [BR2838 19-20] to implement two short-term, time-limited changes for already-employed temporary migrants in essential services within the sector and region they are currently employed in.

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

### Recommended action

- a **Note** that the Government has already responded to requests by health care and supermarket employers and industry groups (both essential services) for flexibility with regard to foreign workers to enable them to effectively respond to the changed circumstances associated with the COVID-19 pandemic [CAB-20-MIN-0132, 2817 19-20, 2824 19-20]
- Noted*
- b **Note** that you previously agreed [BR2838 19-20] to implement two short-term, time-limited changes for already employed temporary migrants in essential services within the sector and region they are currently employed in, namely:
- i. removing weekly maximum hour caps for all international students currently employed in an essential services role (and with a single employer) for the period in which New Zealand remains at Alert Level 3 or 4, plus an additional six weeks, and
  - ii. facilitating the variation of conditions relating to hours, employer and type of work for temporary migrants employed in an essential services role for the period in which New Zealand remains at Alert Level 3 or 4, plus an additional six weeks
- Noted*
- c **Note** that you also previously agreed [BR2838 19-20] to immigration officers exercising their discretion under the Immigration Act 2009 to vary the visa conditions of individual migrant workers and international students identified directly by employers
- Noted*
- d **Agree** to certify immigration instructions that allow immigration officers upon notification by the employer to vary the conditions of a student visa holder employed by a business that is operating during COVID-19 Alert Level 4 to enable full time employment in any occupation


for that same employer (for the period in which New Zealand remains at Alert Level 3 or 4, plus an additional six weeks)

*Agree / Disagree*

- e **Agree** to certify immigration immigrations that allow immigration officers upon notification by the employer to vary the conditions of an employer-specific work visa holder employed by a business that is operating during COVID-19 Alert Level 4 (for the period in which New Zealand remains at Alert Level 3 or 4, plus an additional six weeks) to work:
1. in any occupation for that same employer; or
  2. in their current occupation for a different employer

*Agree / Disagree*

- f **Note** that to operationalise the policy decisions quickly and enable a streamlined approach the process will rely on employer declarations that they provide essential services and are/were operating during Level 4 alert  
*Noted*
- g **Note** that the proposed changes to Temporary Entry instructions attached at Appendix 2 have been reviewed and agreed by the General Manager, Enablement  
*Noted*
- h **Note** that no fee will be charged to vary conditions under these instructions because visa conditions will be varied upon notification by the employer rather than upon application by the visa holder  
*Noted*
- i **Note** that the process proposed allows employers in essential businesses to notify Immigration New Zealand directly of eligible workers rather than first seeking approval from sector lead agencies  
*Noted*

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

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

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## Background

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1. As previously noted [BR2838 19-20], there have been a number of enquiries from individual employers and industry groups seeking greater flexibility in the application of temporary work visa settings, to enable them to effectively respond to the changed circumstances associated with the COVID-19 pandemic. These requests have resulted from the border restrictions (preventing some workers from entering) and shifts in the demand for labour and skills within the domestic economy.
2. To help alleviate some of these pressures, changes to work visa conditions for certain temporary migrants in two essential industry sectors were recently agreed:
  - a. Health care sector: Cabinet agreed to extend the stand-down period by one year for onshore workers in the health care sector (including aged residential care and support workers)<sup>1</sup>; and to allow student visa holders to work more than 20 hours per week<sup>2</sup>
  - b. Supermarkets operated by Woolworths and Foodstuffs: You agreed to relax visa restrictions of current supermarket employees for a period of 30 days to allow work visa holders to work in roles other than those specified on their visa; and to allow student visa holders to work more than 20 hours per week.<sup>3</sup>
3. Similar decisions were also made [BR2768 19-20] to allow Recognised Seasonal Employer (RSE) workers flexibility to move between employers, in order to meet short-term labour needs in the horticulture and viticulture industry, and also enable RSE workers to support themselves whilst unable to return home.
4. Greater flexibility for employers in other essential industries is also required to meet current needs. This will be achieved by amending immigration instructions to allow these employers to deploy existing staff on temporary visas linked to their employment more flexibly. While it is preferable that any extra labour demand is met by employing New Zealand workers, this is not currently logistically possible for employers who are seeking to meet immediate and pressing labour supply needs across essential industries and services.

## Proposal

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*Employers in essential businesses can contact Immigration New Zealand to request a variation of visa conditions for staff*

5. To operationalise an efficient and quick variation of conditions policy it is proposed that the approach comprises of the following:
  - a. an employer led process where the employer contacts INZ directly
  - b. a proxy for establishing whether a business is essential or not based on operating during Level 4 alert
  - c. reliance on employer declarations that they meet the requirements for a business providing an essential service and a light touch, high trust model for INZ processing, and
  - d. undertaking further checks or verification only where adverse information is held about an employer or a worker.
6. The process for accessing a variation of conditions will be employer-led. Employers will contact Immigration New Zealand (INZ) directly (not through a sector lead agency as originally proposed). INZ will undertake a streamlined assessment based on declarations from the employer (e.g. confirmation that the visa holder agrees to the variation, confirmation the employer was operating during Level 4, confirmation that the employer is providing an

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<sup>1</sup> CAB-20-MIN-0132, 25 March 2020.

<sup>2</sup> BR 2817 19-20, 24 March 2020.

<sup>3</sup> BR 2807 19-20, 22 March 2020 (adjusted in BR 2824 19-20, 25 March 2020), Immigration New Zealand Amendment Circular 2020-11, 26 March 2020.

essential service and confirmation that minimum employment standards are being adhered to). INZ will accept these declarations at face value, and only verify the information presented in cases where there are obvious risks (ie where INZ holds any adverse information about the employer or worker).

7. INZ will aim to complete consideration of these variations within seven working days. This time may vary according to the number of requests for variations received under the proposed immigration instructions, and the degree to which the application and communication process can be automated. It has not been possible to estimate the anticipated volumes because a significant number of those eligible are on open work visas (students) and it is not possible to estimate how much movement there will be between businesses.
8. Immigration New Zealand's processing capacity is being impacted by the COVID-19 pandemic. While ordinarily variation of conditions (VOC) applications would be processed on a case-by-case basis, this is not currently operationally feasible at a large scale. The process described is designed to make varying conditions as efficient as possible under current circumstances, while preserving the ability to refuse any variation where the risk of exploitation is significant. Further details on the process can be found at Appendix 1.

*Student and employer-specific work visa holders will be eligible to have their visa conditions varied*

9. Only student visa holders and employer-specific work visa holders (such as Essential Skills) will be eligible to have their visa conditions varied under the proposed instructions and process. For employer-specific work visa holders, the conditions can be varied for workers to either work in any role for the same employer, or if moving to a new employer they must continue working in the same occupation. For student visa holders with work rights their conditions can be varied to enable more than 20 hours of work but they must stay with that employer.

*Immigration officers may refuse to vary visas where there is a credible risk of exploitation*

10. Where an immigration officer has information that a particular employer is likely to be in breach of existing immigration or employment laws, they may refuse to vary a staff member's visa under the proposed instructions. This is likely to be only where credible information has been received that an employer is, for example, charging staff a premium for employment, employing staff in breach of their visa conditions, or paying staff less than the minimum wage.

*The risk to employment opportunities for New Zealanders will be mitigated by the short duration that visa conditions will be varied for*

11. You have previously indicated that policy responses to contribute to New Zealand's response to the novel coronavirus (COVID-19) outbreak:
  - support employers to deliver essential goods and services while New Zealand remains on Alert Level 3 or 4
  - are straightforward to operationalise and understand (and therefore are easy to communicate to employers, migrants and the public)
  - support migrant welfare, especially of stranded migrants, and
  - preserve the government's ability in the medium and longer term to prioritise New Zealanders for available work.
12. The policy and process proposed seeks to preserve the Government's ability to prioritise employment opportunities for New Zealanders by limiting the duration of the variation of conditions to six weeks after the region the person is working in first moves to Level 2 of the COVID-19 Alert System. This means that the ability of employers to move migrant workers between roles, or employ them for more than would normally be allowed will end when recruitment of New Zealanders becomes possible under fewer restrictions on recruitment and movement of New Zealanders.

*Lead agencies for essential sectors will no longer receive requests from businesses to vary the visa conditions of existing staff*

13. It was earlier proposed [BR2838 19-20] that:
  - a. Employers would submit a list of temporary visa holders to the lead agency for the relevant essential service sector for approval.<sup>4</sup> The lead agency would consider whether these redeployments should be considered essential and involve the agency making a judgment about whether the employer's business constitutes an essential service within their sector, rather than an assessment of whether the individual employee is an essential worker.
  - b. Once approved by the lead agency, INZ would consider varying the conditions of these visa holders in bulk without requiring an application to be submitted (and therefore a fee would not be required).
14. It is now proposed instead that businesses declare that they provide an essential service, comply with government guidelines for employers (set out at [www.covid19.govt.nz/businesses-and-employees/employers/](https://www.covid19.govt.nz/businesses-and-employees/employers/)) and are (or were) operating during alert level 4. Immigration officers will not assess the essential services claim, and will use the declaration that they operated in alert level 4 as a proxy for assessment of the business being an essential service. In any non-obvious cases, INZ may refer any that are not plausibly essential to the MBIE Essential Services team for confirmation.
15. This change is in response to the unavailability of sector leads across all areas of business. Consideration was given to requiring advice from MBIE Essential Services in every instance. That approach is likely to delay the process for employers and applicants. Instead, this process assumes that any business seeking agreement will be confident it is an essential service and will have tested this if there was any doubt. Most businesses operating during alert Level 4 and seeking employees is likely to be an essential business. Further mitigating the risk of non-essential businesses seeking greater flexibility through this process is the limited duration that any variation would be in effect for.

## Next steps

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16. If you agree to the proposed process then you are invited to certify changes to immigration instructions at Appendix 2.
17. Proposed additions to immigration instructions are highlighted for ease of reference. Highlighting will not appear in the published versions of the amended Operational Manual.
18. If you agree to the proposed process and certify the immigration instructions in Appendix 2, the process will be available from 16 April 2020.

### *Communication will be proactive*

19. 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.
20. Information about the process and the requirements to allow visa conditions to be varied will also be published on the Immigration New Zealand website. Information about the change will also be communicated to employer sector bodies and unions through email and phone-calls as appropriate. That is, it will be widely communicated through many channels.
21. Although we previously recommended taking the same communications approach to these proposals as taken for previous decisions on supermarket workers – i.e. inform industry leads that this flexibility is available, rather than proactively announcing it to the public, it is now proposed to publicise the proposed instructions and process more widely.

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<sup>4</sup> Where the sector is named on the government's "Essential Businesses" website at: <https://covid19.govt.nz/government-actions/covid-19-alert-level/essential-businesses/>

22. This change in approach recognises that greater clarity about changes to immigration settings reduces uncertainty and anxiety for both overseas workers and employers, and makes compliance with immigration requirements easier. It also recognises that as changes to immigration instructions are widely distributed including to migrants, immigration advisers and employers, providing little initial communication leads to a greater need for reactive communication after the policy takes effect.

Proactively Released

## Appendix 1 – Process detail

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### *Process for varying the conditions of student and work visas to support employers to deliver essential goods and services*

The proposed process would operate as follows:

- a. Employers in an essential business notify Immigration New Zealand by email or by electronic form of any current staff who agree to have their visa conditions varied
- b. Immigration New Zealand would confirm that:
  - i. the employer is plausibly an essential business
  - ii. the visa holder is plausibly legally employed by that employer, and
  - iii. there are no known concerns about the employer that prevent varying the visa conditions of existing staff
- c. In accordance with section 52(2)(b) of the Immigration Act 2009, an immigration officer considers varying (until six weeks after New Zealand first moves to Level 2 in the COVID-19 Alert System) the visa conditions of approved staff to allow:
  - i. Any staff who are student visa holders to work full time for that employer
  - ii. Any staff who are employer-specific work visa holders to work for that same employer in any occupation
  - iii. Any staff who are work visa holders to work for a different employer in the same region in the same occupation as they are currently employed.
- d. If a variation is granted, an immigration officer records the variation of conditions in the Immigration New Zealand Application Management System (AMS) and communicates the new visa conditions to the visa holder and the employer.

### *Request and approval process will be iterative*

Due to the short time-frame for implementation, employers will initially email Immigration New Zealand information about their business, the names and other personal information of any eligible worker, and a declaration prepared by Immigration New Zealand.

Work is underway to create an automated process so that employers may complete an electronic form which when submitted creates a relevant item in INZ's database, AMS. Variations may then be considered and approved in bulk (as all staff on an eligible visa for a compliant employer will have their visa conditions varied).

This automated process is expected to be available in two to three weeks.



**Appendix 2 - Proposed amendments to Temporary Entry instructions effective on 16 April 2020**

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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 (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 in 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).

#### E3.26.1.6 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**

- 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).
- 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 Varying the conditions of student and work visas to support essential businesses during the Covid-19 response period**

- 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.
- An immigration officer may grant a variation of conditions to a student or worker, subject to receiving a request from an employer which includes a declaration confirming that:
  - The employer was operating during Alert Level 4; and
  - The employer meets the criteria for a business providing an essential service as published on the [www.Covid-19.govt.nz](http://www.Covid-19.govt.nz) website
  - The worker has agreed to be redeployed and that minimum employment standards will be adhered to (including where applicable a new written employment agreement).
- 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.
- An immigration officer must notify the visa holder of the new conditions in writing.
- An immigration officer may refuse a request to grant a variation to conditions (without providing a reason), where:
  - there are significant concerns about the individual visa holder (for example any relevant health or character concerns); or
  - there is evidence or significant concerns that the employer does not meet the general requirements of W2.10.5; or
  - 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**

- People holding work visas that specify their occupation, employer and region of employment may be granted a variation to either the employer or their occupation under these instructions (but not both).
- The occupation may be varied to state that the visa holder can work in 'any occupation' for the employer specified on their visa.
- 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**

- 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.
- The student visa holder must have been employed by the employer specified in (a) above on 16 April 2020.
- 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 2 of the submission dated 15 April 2020 are part of Temporary Entry instructions on and after 16 April 2020.

Hon Iain Lees-Galloway  
Minister of Immigration

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