



BRIEFING

Special direction to allow transit through New Zealand to support the repatriation of stranded people

Date:	10 April 2020	Priority:	Urgent
Security classification:	In Confidence	Tracking number:	2971 19-20

Action sought		
	Action sought	Deadline
Hon Iain Lees-Galloway Minister of Immigration	Sign the special direction	10 April 2020

Contact for telephone discussion (if required)				
Name	Position	Telephone		1st contact
Alejandra Mercado	Manager Operational Policy	s 9(2)()	s 9(2)(a)	✓
Chris Holland	Senior Business Analyst Operational Policy	s 9(2)(a)	N/A	

The following departments/agencies have been consulted
Ministry of Foreign Affairs and Trade

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments

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Date:	10 April 2020	Priority:	Urgent
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Purpose

This briefing provides further information and a proposed special direction regarding those transiting New Zealand, following requests to the Ministry of Foreign Affairs and Trade (MFAT) by foreign governments.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Note** that the Ministry of Foreign Affairs and Trade has negotiated a number of Government to Government agreements, allowing certain foreign nationals to transit New Zealand (and vice versa) under specified criteria Noted
- b **Note** that a special direction is required to implement the transit agreements Noted
- c **Agree** to classify the individuals described in the attached special directions in Appendix 1 and 2 as persons to whom a transit visa waiver applies by signing the attached special direction Agree / Disagree
- d **Note** that as further Government to Government agreements are concluded, officials will provide further special directions for your consideration Noted

Stephen Dunstan
General Manager, Enablement
Immigration New Zealand, MBIE

10 / 4 / 2020

Hon Iain Lees-Galloway
Minister of Immigration

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Background

1. People transiting New Zealand must normally hold a transit visa or transit ETA. Transit passengers can only travel through an international airport, must stay in the transit area of the airport or on board the aircraft, and may not be in New Zealand for a transit period exceeding 24 hours unless the time is extended by an immigration officer. They have no right to apply for a visa or entry permission on arrival.
2. On 19 March 2020, you issued a special direction which suspended the transit visa waiver regime. This had the effect of preventing any transit through New Zealand, implementing Cabinet decisions to that effect. These measures were taken to support the Government response to COVID-19.
3. On 25 March 2020, Ministers with Power to Act on COVID-19 agreed that there be an exemption to the closure of the borders to incoming transit passengers in the case where passengers departing from New Zealand are disembarking at an overseas port where there is a Government to Government arrangement that those passengers will be accepted as part of repatriation.
4. On 6 April 2020, Cabinet noted the 25 March 2020 agreement referred to in paragraph 3 above and strengthened the requirements by agreeing [CAB-20-MIN-0156] that transit through New Zealand should continue to be allowed where there is a Government to Government agreement¹ to support the repatriation of stranded people, where the following conditions are met:
 - a. Passengers remain airside and do not exceed 10 hours in transit
 - b. Health requirements have been met
 - c. There is a formally documented Government to Government undertaking that all passengers will either be accepted at the port of disembarkation and/or allowed to transit that port in order to travel onwards to a third country.
5. MFAT have negotiated a number of Government to Government arrangements with other countries allowing foreign citizens to transit New Zealand consistent with the above requirements. The arrangements that have been concluded to date are set out in the implementation section below.
6. MFAT expect further arrangements to be negotiated with other countries in the coming weeks. The following countries have requested transit arrangements: Japan, Malaysia, Qatar, Korea, Ecuador, Brazil, Italy, Denmark and Sweden. Further briefings and special directions will be provided to implement these arrangements once they are concluded.

Implementation

7. MFAT has provided to INZ a list of countries where Government to Government agreements have been concluded, including a copy of the Third Person Note (TPN) confirming the arrangements. With these agreements in place, INZ will recognise that every passenger who transits New Zealand under one of these arrangements is doing so in accordance with the requirements set out by Cabinet and INZ will allow the passenger to be boarded so that they may transit New Zealand and continue their onward journey.
8. To implement the Government to Government arrangements concluded so far (and to enable INZ to provide the correct boarding directive), it is proposed that you issue a special direction under section 86(4)(a) of the Immigration Act 2009 (the Act) which classifies certain persons from those countries with an agreement as persons to whom a transit visa waiver applies. This means that they will not require a transit visa or NZeTA to travel to and be in New Zealand as a transit passenger.

¹ Diplomatic protocols require that the word arrangement rather than agreement is used.

9. There are two classes of travellers who will transit New Zealand: 1) people who transit New Zealand where the next destination is their final destination or (2) people who transit New Zealand onto another transit destination.

Class 1: Next destination is final destination

- A person transiting New Zealand whose immediate destination after New Zealand is their final destination. There will need to be a Government to Government arrangement conditional on a country's citizens and residents meeting the requirements agreed to by Cabinet, including the duration of transit and health requirements.
- Example – A Malaysian citizen in the Cook Islands transiting Auckland direct to Malaysia. A Government to Government agreement with Malaysia will be required outlining the requirements to be met.
- New Zealand has arrangements with the following countries under class 1:
 - United States
 - Canada

Class 2: Next destination is another transit country

- A person transiting New Zealand and their immediate destination after New Zealand is a further transit country. A Government to Government arrangement is required with the transit country subject to the transit passenger meeting the transit window and health requirements and allowing the person to transit in that country. In addition, a Government to Government undertaking is required from their final destination (or further transit destinations) that they will be accepted at their final destination.
- Example – A French citizen in the Cook Islands is going to transit New Zealand on their way to the United States. They will then travel from the United States to France. A Government to Government agreement with the United States will be required for the French citizen to transit the US and a Government to Government undertaking from France that they will be accepted back into France.
- New Zealand has arrangements with the following countries under class 2:
 - Uruguay
 - Italy
 - Brazil
 - Mexico
 - North Macedonia
 - France
 - The Netherlands
 - Bulgaria
 - Switzerland
 - Canada
 - Ecuador
 - Japan
 - Norway
 - Finland
 - Sweden
 - Croatia
 - Germany
 - Slovenia
 - Austria
 - United States
 - United Kingdom
 - Denmark

10. In accordance with section 86(5) the special directions:

- a. Must be published in the *Gazette* and notified in writing through diplomatic channels to the countries concerned; and
- b. Is a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives.

11. In accordance with section 86(6), the proposed special direction may not be effectively continued in force by the making of a further special direction to the same or similar effect. However, this does not prevent similar special directions being made for other groups of people if other arrangements are concluded.

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Appendix 1 – Special direction class 1

Immigration Act 2009

Special direction – Waiver of the requirement for a transit visa to travel to and be in New Zealand as a transit passenger

Pursuant to section 86(4)(a) of the Immigration Act 2009, by special direction, the following persons are classified as persons to whom a transit visa waiver applies. Any person who is to travel to and be in New Zealand as a transit passenger only:

1. who is a citizen of, or a foreign national ordinarily resident in, one of the countries listed in the attached Schedule – Class 1; and
2. whose immediate or ultimate destination after transiting through New Zealand is the country of which they are a citizen of or ordinarily resident in; and
3. who is the immediate family (partners, spouses, dependent children under the age of 24 and legal guardians) travelling with a person to whom clause 1 and 2 applies; and
4. for whom there is a Government to Government arrangement to support their repatriation into the country of which they are a citizen of, or foreign national ordinarily resident in, where the following conditions are met:
 - 4.1 they remain airside (do not enter New Zealand) and do not exceed 10 hours in transit; and
 - 4.2 health requirements have been met; and
 - 4.3 it is formally documented in the Government to Government arrangement that their Government undertakes that they will be accepted into the country of which they are a citizen of or ordinarily resident in.

This special direction expires on 19 June 2020, unless cancelled earlier.

Dated this 10th day of April 2020

Hon IAIN LEES-GALLOWAY, Minister of Immigration

Hon Iain Lees-Galloway
Minister of Immigration

Schedule – Class 1

1. United States of America
2. Canada

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Appendix 2 – Special direction class 2

Immigration Act 2009

Special direction – Waiver of the requirement for a transit visa to travel to and be in New Zealand as a transit passenger

Pursuant to section 86(4)(a) of the Immigration Act 2009, by special direction the following persons are classified as persons to whom a transit visa waiver applies. Any person who is to travel to and be in New Zealand as a transit passenger only:

1. who is a citizen of, or a foreign national ordinarily resident in, one of the countries listed in the attached Schedule – Class 2; and
2. whose immediate destination after transiting through New Zealand is a third party country of which they are not a citizen or ordinarily resident in; and
3. who is the immediate family (partners, spouses, dependent children under the age of 24 and legal guardians) travelling with the person to whom clause 1 and 2 applies; and
4. for whom there is a Government to Government arrangement with any third party countries in which they are transiting after New Zealand, to support their repatriation into the country of which they are a citizen of, or foreign national ordinarily resident in, where the following conditions are met:
 - 4.1 they remain airside (do not enter New Zealand) and do not exceed 10 hours in transit; and
 - 4.2 health requirements have been met; and
 - 4.3 it is formally documented in a Government to Government arrangement that their Government undertakes that they will be accepted into the country of which they are a citizen or ordinarily resident in.

This special direction expires on 19 June 2020, unless cancelled earlier.

Dated this 10th day of April 2020

Hon IAIN LEES-GALLOWAY, Minister of Immigration

Hon Iain Lees-Galloway
Minister of Immigration

Schedule - Class 2

1. Uruguay
2. Italy
3. Brazil
4. Mexico
5. North Macedonia
6. France
7. The Netherlands
8. Bulgaria
9. Japan
10. Norway
11. Finland
12. Sweden
13. Croatia
14. Germany
15. Slovenia
16. Austria
17. United States of America
18. Canada
19. United Kingdom
20. Switzerland
21. Ecuador
22. Denmark

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