

IMMIGRATION
NEW ZEALAND



Immigration New Zealand Operational Manual

Border Entry

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Note: Border policy contained in this section of the Operational Manual is INZ operational policy and does not constitute Government immigration policy as described in section 13A(1) of the Immigration Act 1987.

Y1 OBJECTIVE

The objective of Border Policy is:

- a. to facilitate the entry of travellers to New Zealand who meet entry requirements; and
- b. to identify and manage the risks to New Zealand arising from those travellers who do not meet entry requirements.

Effective 01/10/1999

Y2 ARRIVALS AND DEPARTURES

Both passengers and carriers arriving in and departing from New Zealand have responsibilities under the Immigration Act 1987 and the Immigration Regulations 1999.

Effective 01/10/1999

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Y2.1 Passenger responsibilities on arrival

See previous policy Y2.1 Effective 01/10/1999

Immigration Act 1987 s 126

Immigration Regulations 1999 regs 9, 12, 41

- a. Passengers, including New Zealand citizens and residents, are responsible on arrival for:
 - i (unless they hold a pre-cleared permit) presenting themselves to an immigration officer with a completed arrival card (and thereby making an application for a permit); and
 - ii producing their passport or certificate of identity to an immigration officer; and
 - iii producing, if required by an immigration officer, all or any of the following:
 - their visa;
 - travel tickets or evidence of onward travel arrangements;
 - evidence of funds for maintenance or of sponsorship; and
 - iv (if they are responsible for the care of a person who cannot comply with Y2.1(a)(i) and (ii) because of age or disability) complying on behalf of that person.
- b. A person who arrives in New Zealand other than at a Customs place (see Y2.1.1 below) must report to an immigration officer at a Customs place forthwith after arriving and then comply with the responsibilities in Y2.1(a)(i) and (ii) above.

Example: an ocean-going yacht which calls into the nearest New Zealand port for repairs or maintenance.

- c. A passenger who fails to comply with the responsibilities set out above or completes an arrival card in a manner that they know is false or misleading in any way commits an offence and may be prosecuted.

- d. Any person who does not report, or in respect of whom it is suspected that they will not report, to an Immigration officer at a port of entry may be arrested by a member of the New Zealand Police and brought before an immigration officer.

Y2.1.1 Definition of 'Customs place'

Customs and Excise Act 1996 ss 2, 9

- a. 'Customs place' means a Customs port or Customs airport.
- b. 'Customs port' means a port of entry designated by the Chief Executive, New Zealand Customs Service, as a Customs port.
- c. 'Customs airport' means an airport designated by the Chief Executive, New Zealand Customs Service, as a Customs airport.

Effective 07/10/2002

Y2.5 Passenger responsibilities on departure

Immigration Act 1987 s 126

- a. Passengers are responsible on departure for:
 - i presenting themselves to an immigration officer with a completed departure card; and
 - ii producing their passport or certificate of identity to an immigration officer; and
 - iii (if they are responsible for the care of a person who cannot comply with Y2.5(a)(i) and (ii) above because of age or disability) complying on behalf of that person.
- b. A passenger who fails to comply with the responsibilities set out above or completes a departure card in a manner that they know is false or misleading in any way commits an offence and may be prosecuted.

Effective 01/10/1999

Y2.10 Who is exempt from passport requirement

Immigration Regulations 1999 reg 27(1)

A member of the armed forces of any country, or a crew member of any craft used to transport members of the armed forces of any country to New Zealand, is exempt from having to produce a passport or certificate of identity under section 126(1)(b) or 126(2)(b) of the Immigration Act 1987 if:

- a. members of that armed force are in New Zealand at the request or with the consent of the New Zealand Government; and
- b. that person's presence in New Zealand is in the ordinary course of their duty or employment.

Effective 01/10/1999

Y2.15 Who is exempt from need for arrival and departure cards

Immigration Regulations 1999 reg 28

A person is exempt from having to present an arrival card under section 126(1)(a) and a departure card under section 126(2)(a) if they are:

- a. a member of the armed forces of any country, or a crew member of any craft used to transport members of the armed forces of any country to New Zealand, who:

- i is temporarily exempt from having to hold a permit under section 11(1)(b) of the Immigration Act 1987; and
 - ii arrives in New Zealand on a craft that is set aside for or being used by the armed forces of any country; or
- b. a passenger or crew member of any seagoing vessel who is temporarily exempt from having to hold a permit under section 11(1)(c) of the Immigration Act 1987; or
- c. a crew member of any commercial aircraft who is temporarily exempt from having to hold a permit under section 11(1)(e) of the Immigration Act 1987.

Effective 01/10/1999

Y2.20 Carrier responsibilities prior to departure

Immigration Act 1987 ss 125AA

- a. Prior to their departure from another country to travel to New Zealand, carriers are responsible for obtaining passenger information from every person who intends to board the craft for the purpose of travelling to New Zealand and to provide that information and information identifying the craft and its intended movements to the chief executive of the Department of Labour (refer to Y2.55). This information is then used as part of the Advance Passenger Processing (APP) system to determine whether or not the individual may board the relevant craft. Carriers may only permit individuals to board the craft in accordance with a subsequent direction of the chief executive.
- b. Carriers retain responsibility for ensuring all persons on board the craft have the appropriate immigration documentation including:
 - i a valid passport or certificate of identity; and
 - ii a visa (if required); and
 - iii evidence of onward travel arrangements; and
 - iv evidence of sufficient funds (if required); and
 - v any other documentation required by the Immigration Regulations 1999.

Effective 04/04/2005

Y2.25 Carrier responsibilities on arrival

Immigration Act 1987 ss 125, 126(1)
Immigration Regulations 1999 reg 12

See previous policy Y2.20 Effective 01/10/1999

- a. Carriers are responsible on arrival for:
 - i ensuring all persons on board the craft have the appropriate immigration documentation including:
 - a valid passport or certificate of identity; and
 - a visa (if required); and
 - evidence of onward travel arrangements; and
 - evidence of sufficient funds (if required); and
 - any other documentation required by the Immigration Regulations 1999; and
 - ii preventing, by reasonable force if necessary, any person landing in New Zealand other than:
 - at a Customs place; or
 - for the purpose of complying with the responsibilities in Y2.1(a) (on page 2-1); and

- iii providing, on demand by any immigration officer, any details about any persons on board the craft since its last port of call; and
 - iv ensuring, if the craft is unable to land at a Customs place, that all persons on board report to an immigration officer at a Customs place within 72 hours of arriving in New Zealand; and
 - v reporting, to an immigration officer as soon as practicable, the existence of any stowaway on board.
- b. A carrier who fails to meet the responsibilities set out above commits an offence and may be prosecuted.

Effective 04/04/2005

Y2.30 Carrier responsibilities on departure

Immigration Act 1987 s 125

See previous policy Y2.25 Effective 01/10/1999

- a. Carriers (see Y2.30.5 below) are responsible on departure for:
- i reporting to an immigration officer immediately before the craft (see Y2.30.1 below) leaves, details of any person who:
 - was on board when the craft arrived in New Zealand; and
 - (being a crew member of, or passenger on, a seagoing ship or foreign fishing craft; or a crew member of a commercial aircraft) was exempt from having to hold a permit to be in New Zealand; and
 - is not on board the departing craft; and
 - ii allowing on board the craft for carriage from New Zealand any person subject to a removal or deportation order, as long as the fare is paid and the safety of the craft or other persons on board is not endangered; and
 - iii if the Police deliver such a person to the craft, taking all reasonable steps (including the use of reasonable force) necessary to detain that person on board the craft until it has left New Zealand; and
 - iv providing, at the carrier's cost, carriage from New Zealand of any person who:
 - was on board the craft, or any other craft operated by the carrier, when it arrived in New Zealand but did not hold a visa and was not exempt from having to hold a permit and was not granted a permit (see Y3 (on page 3-1)); or
 - arrived as crew of the craft, or any other craft operated by the carrier and remained unlawfully in New Zealand after that craft left; and
 - v meeting the costs (if any) incurred by the Crown in detaining and maintaining any person described in Y2.25(a)(iv) above until the person has left New Zealand on the first available craft.
- b. A carrier who fails to meet the responsibilities set out above commits an offence and may be prosecuted.

Y2.30.1 Definition of 'craft'

Immigration Act 1987 s 2

'Craft' means any form of aircraft, ship, or other vehicle or vessel capable of being used to transport any person to or from New Zealand from or to any country outside New Zealand.

Y2.30.5 Definition of 'carrier'

Immigration Act 1987 s 2

'Carrier' in relation to a craft, means the owner or charterer of the craft; and if the owner or charterer is not in New Zealand, includes the owner's or charterer's agent in New Zealand or, if there is no such agent in New Zealand, the person in charge.

Effective 04/04/2005

Y2.35 When carrier is exempt from its responsibility under...

Y2.35 When carrier is exempt from its responsibility under section 12(2)(a) of the Immigration Act 1987

Immigration Regulations 1999 reg 27(2)

See previous policy Y2.30 Effective 01/10/1999

The carrier and the person in charge of any craft carrying a person who is exempt from having to produce a passport or certificate of identity under regulation 27(1) are exempt from having to ensure under section 125(2)(a) of the Immigration Act 1987 that such a person holds a passport or certificate of identity.

Effective 04/04/2005

Y2.40 Memorandum of understanding with airline carriers

See Y2.35 Effective 01/10/1999

- a. A Memorandum of Understanding (MOU) exists between INZ and certain airlines. The MOU:
 - i records an agreed approach to border responsibilities between the parties; and
 - ii clearly assigns responsibilities in developing and implementing best practices to minimise the number of breaches of the Immigration Act 1987; and
 - iii focuses on the level of airline infringements and their associated causes.
- b. If it is necessary to formally review the passenger check-in and processing procedures at a particular airport the consent of the airline concerned must be obtained.
- c. Despite the existence of the MOU, INZ reserves the right to prosecute carriers when appropriate.

Effective 04/04/2005

Y2.45 Persons returning to New Zealand through emergency

See previous policy Y2.40 Effective 04/04/2005

Immigration Act 1987 s 127

- a. If the holder of a temporary permit leaves New Zealand for another country and before arriving in any other country is forced to return to New Zealand through emergency, the person must, if their permit has expired or is due to expire at any time between their leaving New Zealand and 14 days after their returning to New Zealand, upon application, be granted a further temporary permit current for at least 14 days after their return.
- b. If a person who is exempt from having to hold a permit leaves New Zealand for another country and before arriving in any other country is forced to return to New Zealand

through emergency, the person must, if their exemption has expired or is due to expire at any time between their leaving New Zealand and 14 days after their returning to New Zealand, be deemed to be exempt from having to hold a permit for 14 days after their return.

Effective 04/04/2005

Y2.50 Advance Passenger Processing

Immigration Act 1987 ss 125AA to 125AE

- a. The Department of Labour requires airlines to initiate passenger checks and pre-processing of passengers prior to embarkation for travel to and through New Zealand by means of the Advance Passenger Processing (APP) system.
- b. APP assists in the facilitation of efficient and effective processing of all passengers on entry to, and through, New Zealand

Y2.50.1 Provision of information for the purpose of Advance Passenger Processing

- a. A carrier, and a person in charge of a commercial craft that proposes to travel to New Zealand, who is notified by the chief executive of the Department of Labour that they must comply with responsibilities under section 125AA of the Immigration Act 1987 must, prior to their departure from another country to travel to New Zealand, obtain information from every person who intends to board the craft for the purpose of travelling to New Zealand.
- b. This information includes:
 - i the person's name, date of birth, nationality, sex, passport or certificate of identify number (if any) and passport or certificate of identity expiry date (if any); and
 - ii the issuer of the person's passport or certificate of identity, if it is not the person's country of nationality (if any); and
 - iii the person's status as a traveller (including but not limited to, whether the person is a member of the crew of the craft, a passenger whose destination is New Zealand, or a passenger whose destination is other than New Zealand).
- c. Prior to their departure from another country to travel to New Zealand, carriers and a person in charge of a commercial craft, may also be required to provide to the chief executive of the Department of Labour, by means of an approved system (see Y2.50.15 below):
 - i information identifying the craft and its intended movements, and
 - ii the electronic location of specified information in respect of those persons travelling to New Zealand on that craft that airlines hold in their electronic systems.
- d. A carrier or person in charge of a commercial craft who fails to meet the responsibilities set out above commits an offence and may be prosecuted.
- e. The chief executive of the Department of Labour may exempt a carrier or a person in charge of a commercial craft from complying (in whole or in part) with the requirements set out in (b) and (c) above.

Y2.50.5 Decisions about people boarding craft from the purpose of coming to New Zealand

- a. The chief executive of the Department of Labour may decide (including by automatic means) that a person about whom passenger information has been received:
 - i may or may not board a craft for the purpose of travelling to New Zealand;
 - ii may board a craft for the purpose travelling to New Zealand if he or she complies with specified conditions.
- b. Where such a decision is made the chief executive must notify the relevant carrier or person in charge of the commercial craft of that decision.
- c. Notification may be in any form or manner that the chief executive thinks is appropriate, including by means of an approved system.
- d. The chief executive may make decisions about whether a person may or may not board or may only board subject to specified conditions, whether or not the person holds a visa to travel to New Zealand, or is exempt from the requirement to apply for and hold a visa to travel to New Zealand or is exempt from the requirement to hold a permit to be in New Zealand.
- e. The chief executive may not make decisions about whether a person may or may not board or may only board subject to specified conditions if that person is:
 - i a New Zealand citizen who holds a New Zealand passport; or
 - ii the holder of a returning resident's visa who intends to travel to New Zealand during the currency of that visa; or
 - iii a person who has been granted a pre-cleared permit entered or retained in the records of the Department of Labour under s 35E of the Immigration Act 1987 who intends to enter New Zealand during the currency of that pre-cleared permit on a flight designated by the Minister of Immigration as a pre-clearance flight under s35C of the Immigration Act 1987.
- f. The chief executive is not obliged to give reasons for decisions about whether a person may or may not board or may only board subject to specified conditions, other than that the decision is made in terms of section 125AB(1) of the Immigration Act 1987 and section 23 of the Official Information Act does not apply in respect of such decisions.
- g. A person about whom a decision is made in terms of (a) above may not appeal the decision and may not bring review proceedings in relation to the decision except on the grounds that the decision should not have been made because they are:
 - i a New Zealand citizen who holds a New Zealand passport; or
 - ii the holder of a returning resident's visa who intends to travel to New Zealand during the currency of that visa; or
 - iii a person who has been granted a pre-cleared permit entered or retained in the records of the Department of Labour under s 35E of the Immigration Act 1987 who intends to enter New Zealand during the currency of that pre-cleared permit on a flight designated by the Minister of Immigration as a pre-clearance flight under s35C of the Immigration Act 1987.
- h. Every carrier or person in charge of a commercial craft commits an offence if:
 - i they allow a person to travel to New Zealand before a decision is made by the chief executive in terms of (a) above; or

- ii they fail, without reasonable excuse, to ensure that such a decision is complied with.

Y2.50.10 Requirement to provide further information

- a. If the chief executive has requested further information within 24 hours of the arrival in New Zealand of the craft on which the person to whom the requested information relates intended to or did travel to New Zealand, the relevant carrier or person in charge of the craft must provide the chief executive with information that they hold, or have access to, about:
 - i where and on what date the person booked the intended travel; and
 - ii with whom, if anyone, the person intended to travel; and
 - iii with whom the person has previously travelled; and
 - iv whether or not the person paid for their own intended travel, and the manner of payment; and
 - v the person's travel movements before the intended travel; and
 - vi whether the route of the person's previous travel has changed from the way that he or she originally booked the travel, and if so, in what way; and
 - vii whether the person failed to undertake travel on a previous occasion; and
 - viii whether the person has unchecked baggage.
- b. The information specified in (a)(i)-(viii) above must be provided whether or not the person whom the information is about actually boarded the craft.
- c. The chief executive may also have an ability to access the information specified in (a) (i)-(viii) above directly from the airline's database in an approved form and manner for a period of 24 hours after the arrival in New Zealand of the craft on which the person whom the information is about intended to, or did, travel to New Zealand.
- d. Information specified in (a) (i)-(viii) above may only be retained by the chief executive if:
 - i the chief executive decided that the person to whom it relates may not board a craft for the purpose of travelling to New Zealand; or
 - ii that person has been refused, on arrival, a permit or exemption to be in New Zealand; or
 - iii the information needs to be retained as part of a record of a particular action having been taken in relation to the person to whom it relates (e.g. a record that a person was interviewed on arrival); or
 - iv the information gives the chief executive good cause to suspect that a risk to border security exists.
- e. A carrier or person in charge of a commercial craft who fails, without reasonable excuse, to provide the information specified in (a) above, or access to such information, commits an offence and may be prosecuted.

Y2.50.15 Definition of 'approved system'

An 'approved system' means a system, including an electronic system, approved by the chief executive of the Department of Labour for the purpose of:

- a. providing the information set out in Y2.50.10 (a) and (b) above; or

- b. notifying a carrier or person in charge of a commercial craft of a decision of the chief executive about a person boarding a craft for the purpose of travelling to New Zealand.

Y2.50.20 Delegation of Chief Executive's powers in relation to the operation of Advance Passenger Processing

- a. The Chief Executive of the Department of Labour has delegated to people occupying the positions set out in (b) below the following powers relating to the operation of Advance Passenger Processing:
 - i. the power, in accordance with s125AB(1) of the Immigration Act 1987, to make a decision about whether or not a person may or may not board a craft for the purposes of travelling to New Zealand, including specifying conditions which must be complied with before a person boards a craft for travel to New Zealand; and
 - ii. the power, in accordance with s125AB(2) of the Immigration Act 1987, to determine the means by which any decision made under s125AB(1) of that Act is to be notified to a carrier or person in charge of a commercial craft to whom s125AA applies;
 - iii. the power, in accordance with s125AB(5) of the Immigration Act 1987, to predetermine the criteria by which an automated electronic system analyses information (if any) about a person that is held by the Department of Labour and to which the Department of Labour has access - the automatic electronic analysis of which may result in a decision in accordance with s125AB(1) of that Act;
 - iv. the power, in accordance with s125AD(2) of the Immigration Act 1987 to request information about a person who intended to board a craft for the purpose of travelling to New Zealand, whether or not he or she did in fact board the craft;
 - v. the power, in accordance with s125AD(3) of the Immigration Act 1987, to have access to information of the kind specified in s125AD(5) of that Act about a person who intended to board a craft for the purpose of travelling to New Zealand, whether or not he or she did in fact board the craft, and to approve the manner and form of that access in accordance with ss125AD(4) and (7) of that Act; and
 - vi. the power, in accordance with s125AD(6)(d) of the Immigration Act 1987, to determine whether, in respect of information disclosed or accessed in accordance with ss125AD(1) and (3) of that Act, there is good cause to suspect that a risk to border security exists.
- b. Deputy Secretary - Workforce
Chief Operating Officer, Workforce
Operations Manager, Workforce
Market Manager Border and Investigations, Workforce
Service Manager Border and Investigations, Workforce
Service Leader Border and Investigations, Workforce
Immigration Officer undertaking duties at Auckland Airport

Effective 04/04/2005

Y3 PEOPLE REFUSED ENTRY

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Y3.1 Categories of people who will normally be refused entry

Immigration Act 1987 ss 7(1), 7(3)(ii), 14E(5), 126(4), 128B

People will normally be refused entry to New Zealand if they:

- a. fall within the categories of people outlined in section 7(1) of the Immigration Act 1987, including:
 - i people who have been convicted and sentenced to imprisonment for 5 years or more at any time, or have been convicted and sentenced to imprisonment for 12 months or more in the past 10 years; and
 - ii people against whom a removal order is in force; and
 - iii people who have been deported from any country, including New Zealand; and
 - iv people who are likely to commit an offence against the Crimes Act 1961 or the Misuse of Drugs Act 1975; and
 - v people likely to facilitate, or engage in, an act of terrorism; and
 - vi people who may have engaged in, or have claimed responsibility for, an act of terrorism inside or outside New Zealand; and
 - vii people who are members of, or adhere to, a group engaged in, or that has claimed responsibility for, an act of terrorism inside or outside New Zealand; and
 - viii people who are a threat to security or public order in New Zealand; and
 - ix people who are members of, or adhere to, any organisation which has criminal objectives or is engaged in criminal activities, and whose presence in New Zealand would constitute a threat to the public interest or public order; or

- b. have made a false declaration in their arrival card or failed to comply with passenger responsibilities on arrival, including having failed to produce:
 - i an arrival card; or
 - ii a passport or certificate of identity; or
 - iii other immigration documentation required by an immigration officer; or
- c. are unable to meet the requirements for entry or for a permit under the relevant policy; or
- d. hold false documentation; or
- e. hold a transit visa; or
- f. are stowaways; or
- g. are members of groups on whom UN sanctions have been imposed (see *Y3.45* (on page 3-6)).

Y3.1.1 Refugee status claimants

If a person who would normally be refused entry indicates that they wish to claim refugee status they must not be removed from New Zealand except as permitted under Part VIA of the Immigration Act 1987 (see *Y7* (on page 7-1)).

Effective 01/10/1999

Y3.5 People convicted of criminal offences, subject to a removal order or deported from any country

Immigration Act 1987 s 7(1)(a) to (d)

A person is not eligible for an exemption or permit and, unless a special direction is given, will normally be refused entry into New Zealand if they:

- a. have been convicted and sentenced to imprisonment for 5 years or more at any time; or
- b. have been convicted and sentenced to imprisonment for 12 months or more within the past 10 years; or
- c. are subject to a current removal order; or
- d. have been deported from any country, including New Zealand.

Effective 01/10/1999

Y3.10 People who have committed, ...

Y3.10 People who have committed, claimed responsibility for, or are likely to commit, acts of terrorism, or who may constitute a danger to security or public order in New Zealand

Immigration Act 1987 s 7(1)(e), (f), g(i), (h)

A person is not eligible for an exemption or permit and will normally be refused entry into New Zealand if the Minister has reason to believe that the person:

- a. has engaged in, or claimed responsibility for, an act of terrorism in New Zealand; or

- b. is a member of, or adheres to, any organisation or group of people that has engaged in, or has claimed responsibility for, an act of terrorism in New Zealand; or
- c. has engaged in, or claimed responsibility for, an act of terrorism outside New Zealand and whose presence in New Zealand would constitute, in the opinion of the Minister, a threat to public safety; or
- d. is a member of, or adheres to, any organisation or group of people that has engaged in, or has claimed responsibility for, an act of terrorism outside New Zealand, and whose presence in New Zealand would constitute, in the opinion of the Minister, a threat to public safety; or
- e. is likely to engage in, or facilitate, any act of terrorism; or
- f. is likely to constitute a danger to the security or public order of New Zealand.

Effective 01/10/1999

Y3.15 People likely to commit an offence against the Crimes Act 1961 or the Misuse of Drugs Act 1975

Immigration Act 1987 s 7(1)(g)(ii)

- a. A passenger found in possession of illegal drugs on arrival may have committed an offence, or may be considered likely to commit an offence, under the Crimes Act 1961 or the Misuse of Drugs Act 1975. Such persons will not normally be granted a permit and will normally be refused entry into New Zealand.
- b. A person apprehended at the border in possession of illegal drugs may be:
 - i charged by the Police for carrying or importing drugs; or
 - ii formally warned by the Police; or
 - iii referred by a Customs officer directly to an immigration officer.
- c. If such a person has been charged and detained by the Police until a court appearance, an officer with the appropriate delegation may grant a limited purpose permit under section 353(1) for the express purpose of allowing the person to face the charge(s) laid and to serve any sentence imposed on the charge(s). The court action should be monitored with a view to having the person removed from New Zealand as soon as possible.
- d. If the person is only given a formal warning by the Police, or the person is referred to an immigration officer by a Customs officer, the person should be interviewed to determine whether section 7(1)(g)(ii) of the Immigration Act 1987 applies to them.

Effective 01/10/1999

Y3.20 People who are members of...

Y3.20 People who are members of a group which has criminal objectives or has engaged in criminal activities and who may constitute a threat to public interest or public order

Immigration Act 1987 s 7(1)(i)

A person is not eligible for an exemption or permit and will normally be refused entry into New Zealand if:

- a. the Minister has reason to believe that they are members of, or adhere to, any organisation or group of people which has criminal objectives or which has engaged in criminal activities; and
- b. their presence in New Zealand would, for that reason or any other reason, constitute, in the opinion of the Minister, a threat to the public interest or public order.

Effective 01/10/1999

Y3.25 Persons to whom section 7(1) applies but who are not refused entry

Immigration Act 1987 ss 7(3)(a)(ii) and (iii), 27A

- a. If, after interviewing a person suspected of being subject to section 7(1) of the Immigration Act 1987, an immigration officer determines that section 7(1) does apply but there are compelling reasons to grant a permit, an exception may be made and an appropriately delegated officer may grant a permit by special direction under section 7(3)(a)(ii). If a special direction is given, the permit granted should be of a type and duration appropriate to the reasons for the special direction.
- b. An exception may also be made and a permit granted to enable a person:
 - i to give or provide evidence in New Zealand; or
 - ii to be transported through New Zealand; or
 - iii to return to New Zealand to face any charge or serve a sentence.

Effective 01/10/1999

Y3.30 People unable to meet the requirements for a permit

Immigration Act 1987 ss 126(1)

Immigration Regulations 1999 regs 9, 12, 28

- a. All passengers on craft arriving in New Zealand are required to complete an arrival card and present it, together with a current passport or certificate of identity and, if appropriate, the passenger's temporary visa, at a port of entry. Presenting the completed arrival card constitutes making an application for a permit in the prescribed manner.
- b. Before determining whether a permit should be granted, an immigration officer from Customs may require travel tickets or evidence of onward travel arrangements and evidence of funds for maintenance or of sponsorship to be produced.
- c. People who do not meet the requirements for a permit will be referred to an INZ immigration officer who may refuse entry. Such people include, but are not limited to:
 - i people with expired travel documents or no travel documents; and
 - ii people with no visa, an inappropriate visa or an expired visa; and
 - iii people with insufficient funds and no sponsorship; and
 - iv people with no outward ticket; and
 - v people previously refused entry to New Zealand; and
 - vi people who do not meet the bona fide applicant policy; and
 - vii people who fail to apply for a permit.

Y3.30.1 People arriving without current passports or other acceptable travel documents

Immigration Act 1987 s 126(1)

Immigration Regulations 1999 regs 9, 12

A person who arrives without a current passport or other acceptable travel document may be given a special direction under regulation 9 or 12 waiving the requirement to produce a passport on arrival if, after interviewing the person, an immigration officer is satisfied that:

- a. there are compelling reasons why the person is travelling without a current passport or other acceptable travel document; and
- b. they have a genuine reason for visiting New Zealand; and
- c. there is no other impediment to the grant of a permit.

Note: passport waivers are most frequently granted to New Zealanders who have no passport or whose passports are no longer current and who need to return home in emergencies.

Y3.30.5 People arriving without the required visa

Immigration Act 1987 s 14D(1)

Immigration Regulations 1999 regs 9, 12

A person who arrives without the required visa may be given a special direction under regulation 9 or 12 waiving the requirement for a visa and a permit may be granted if, after interviewing the person, an immigration officer is satisfied that:

- a. there are compelling reasons why the person is travelling without first having obtained a visa; and
- b. they have a genuine reason for visiting New Zealand; and
- c. there is no other impediment to the grant of a permit.

Y3.30.10 People who do not meet entry requirements

Immigration Act 1987 s 126(1)

Immigration Regulations 1999 regs 9, 12

- a. A person who arrives without the necessary documents to meet entry requirements, such as an outward ticket or sufficient funds for maintenance while in New Zealand, may be given a special direction under regulation 9 or 12 waiving the entry requirements and a permit may be granted if, after interviewing the person, an immigration officer is satisfied that:
 - i there are compelling reasons why the person does not meet the entry requirements; and
 - ii they have a genuine reason for visiting New Zealand; and
 - iii there is no other impediment to the grant of a permit.
- b. The officer should also consider enabling the person to meet entry requirements through purchasing tickets or arranging sponsorship.

Y3.30.15 People who do not meet the bona fide applicant policy

- a. If an immigration officer is not satisfied that a person who applies for a permit by tendering an arrival card is a bona fide applicant, then they may refuse a permit and have the person placed on the first available craft (see Y3.70 (on page 3-10)).
- b. If an officer refuses a permit, they must record full reasons for the refusal against the person's INZ record and give written advice of the refusal to a representative of the carrier on which the person arrived in New Zealand and, if requested, to the person refused entry.

Effective 01/10/1999

Y3.35 People with false documents or doubtful bona fides

Immigration Act 1987 ss 45-49, 128, 142; Passports Act 1992 s 31(f)

A person commits an offence against the Immigration Act 1987 if they:

- a. make any statement, or provide any information, evidence or submission, knowing it is false or misleading in any material respect, in support of an application or request for a visa or permit or any claim to an exemption; or
- b. without reasonable excuse, produce or surrender any document or supply any information to an immigration officer knowing that it is false or misleading in any material respect; or
- c. produce or surrender or pass off any passport, certificate of identity, visa, permit, certificate of citizenship as relating to that person when in fact, they know it does not, or they know it to be forged or obtained fraudulently.

Effective 01/10/1999

Y3.40 People who hold transit visas

Immigration Act 1987 s 14E(5)

- a. Holders of transit visas are not entitled to apply for any type of permit to be in New Zealand.
- b. If a person who holds a transit visa applies for any type of permit, an immigration officer may refuse their application, in which case section 128 of the Immigration Act 1987 will apply to that person (see Y4 (on page 4-1)).

Effective 01/10/1999

Y3.45 People ineligible because of UN sanctions

See previous policies:

Y3.45 Effective 12/01/2006

Y3.45 Effective 16/04/2002

Y3.45 Effective 01/10/1999

United Nations Sanctions (Sierra Leone) Regulations 1997 Reg. 11; United Nations Sanctions (Liberia) Regulations 2001 Reg 16; United Nations Sanctions (Al-Qaida and Taliban) Regulations 2007 Reg 13; United Nations Sanctions (Côte d'Ivoire) Regulations 2005 Reg 13; United Nations Sanctions (Democratic People's Republic of Korea) Regulations 2006 Reg 17; United Nations Sanctions (Iran) Regulations 2007 Reg 16B; United Nations Sanctions (Lebanon) Regulations 2008 Reg 17.

- a. In accordance with United Nations sanctions, no person who is a designated individual or specified entity may enter New Zealand or transit through New Zealand, meaning that no such person may be granted or issued a visa or permit. This restriction is in place for the following people:
 - i citizens of Sierra Leone

- ii designated individuals from Liberia
 - iii designated individuals from Côte d'Ivoire
 - iv designated individuals, and their immediate family members, from the Democratic People's Republic of Korea (DPRK)
 - v designated individuals and specified entities from Al-Qaida and Taliban
 - vi designated individuals from Iran
 - vii designated individuals from Lebanon.
- b. INZ case officers must contact the Ministry of Foreign Affairs and Trade (MFAT) when processing any immigration application from a person to whom (a) above applies.
- c. A permit or visa may only be granted or issued to a citizen of Sierra Leone on the advice of the Minister of Foreign Affairs.
- d. A permit or visa may only be granted or issued to a designated individual or specified entity on the advice of the Secretary of Foreign Affairs and Trade

Note: For the purposes of this policy a designated individual and a specified entity is someone who is named on a list of such persons held by INZ and updated from time to time.

Effective 20/10/2008

Y3.50 People with expired returning resident's visa or...

See Y3.50 Effective 01/10/1999

Y3.50 People with expired returning resident's visa or no returning resident's visa

Immigration Regulations 1999 regs 9, 12

- a. A person who is a New Zealand citizen or resident will be referred to an INZ immigration officer on arrival in New Zealand, whether or not they appear to meet the requirements for a permit, if they:
- i travel outside New Zealand on a foreign passport; and
 - ii arrive back in New Zealand with an expired returning resident's visa (RRV) or no RRV.
- b. If the person's foreign passport shows that they are a New Zealand citizen or have held a residence permit, the officer may :
- i give a special direction under regulation 3(7) to waive any entry requirements, if necessary; and
 - ii grant a residence permit, if the officer determines that:
 - the person would have been eligible to be granted an RRV before their most recent arrival in New Zealand; and
 - any RRV granted would still have been current on the date of their arrival in New Zealand (see X4); or
 - iii (if the person is not eligible for a residence permit) grant a one month temporary permit.
- c. If the person's foreign passport does not show that they are a New Zealand citizen or have held a residence permit, but the person claims to be a New Zealand citizen or resident, an INZ immigration officer must establish whether the person is in fact a New Zealand citizen or resident.

- d. If the officer clearly establishes that the person is a New Zealand citizen or resident then they may permit the person entry under Y3.50(b).
- e. If the officer cannot clearly establish whether the person is a New Zealand citizen or resident, but is satisfied that the person is more likely than not to be a citizen or resident, the officer may:
 - i give a special direction under regulation 9 or 12 to waive any entry requirements, if necessary; and
 - ii grant a one month temporary permit.
- f. If the officer cannot clearly establish whether the person is a New Zealand citizen or resident, and is not satisfied that the person is more likely than not to be a citizen or resident, the officer may:
 - i grant a one month temporary permit, if the person meets the requirements for a temporary permit; or
 - ii refuse entry under section 128 of the Immigration Act 1987, if the person does not meet the requirements for a temporary permit.
- g. A person who is granted a permit under Y3.50(b) or (e) must apply for an RRV at the time the permit is granted, by completing a RRV application form and paying the appropriate fee. The completed application must be sent by the officer to the appropriate INZ onshore branch office for processing.

Effective 07/10/2002

Y3.55 Stowaways

Immigration Act 1987 ss 125, 128, 137

- a. The person in charge of a craft must reveal the presence of a stowaway on board the craft as soon as practicable (see Y2.20 (a) (on page 2-3)). In most cases the ship's agent will have informed Customs or INZ well in advance of the craft's arrival.
- b. If there are reasonable grounds for believing that there are stowaways or other people intent on avoiding arrival procedures on board a craft, members of the Police and Customs officers undertaking immigration duties have powers under the Immigration Act 1987 to enter and search that craft (see Y3.60 (on page 3-9)).

Note: INZ immigration officers do not have powers to enter or search a craft, and may only enter or search a craft if invited to do so or if called upon by the Police or Customs officers to assist with an arrest.

- c. Action to deal with stowaways may begin as soon as the craft on which they are travelling crosses into New Zealand's territorial limits. The territorial limit is any point 12 miles seaward from the New Zealand shore or baseline, as defined by the Territorial Sea and Exclusive Economic Zone Act 1977.
- d. Stowaways must be detained within 72 hours of the craft berthing, landing or otherwise arriving in New Zealand (see Y4.10 (on page 4-2)). After 72 hours have passed stowaways can only be dealt with by way of removal action.
- e. If stowaways are apprehended then, depending on the circumstances, they may be either detained on board the craft or moved to another place of detention until their departure.

Y3.55.1 Detention on board the craft

In the case of a ship, the preferred option is simply to leave stowaways on board so that they return home on the "round trip". This option can only be taken if:

- a. the authorised shipping agent and the ship's master agree; and
- b. a Medical Officer of the Ministry of Health is satisfied that living conditions are acceptable; and
- c. an immigration officer is satisfied that a stowaway cannot abscond from an onboard place of detention into New Zealand; and
- d. the ship is departing within 72 hours of arrival.

Y3.55.5 Detention elsewhere

If a stowaway cannot be detained on board the craft they may be refused entry and dealt with under section 128 of the Immigration Act 1987 (see *Y4.10* (on page 4-2)).

Effective 01/10/1999

Y3.60 Powers of entry and search by members of...

See previous policy Y3.60 Effective 01/10/1999

Y3.60 Powers of entry and search by members of the Police, and Customs officers

Immigration Act 1987 s 137

- a. A member of the Police or a Customs officer undertaking immigration duties may enter and search any craft, land or premises described in Y3.60(b) below, without warrant or any other authority than section 137 of the Immigration Act 1987, if they believe on reasonable grounds that this is necessary for the purpose of:
 - i detecting any offence against the Immigration Act 1987; or
 - ii capturing any person to whom section 128 of the Immigration Act 1987 applies.
- b. The powers in Y3.60(a) above may be used in respect of all or any of the following:
 - i any craft arriving in New Zealand, to determine if it is carrying:
 - any stowaway; or
 - any other person who is required to supply documentation under section 125 or 126 of the Immigration Act 1987 (see *Y2.1* (on page 2-1)); or
 - ii any land or premises in any airport including any Customs place or Customs controlled area or transit building.
- c. A member of the Police or a Customs officer undertaking immigration duties may, if they consider it necessary, enter and search any of the places or premises described in Y3.60(d) below at any time if they have good cause to suspect that in or on any of those places or premises:
 - i an offence against the Immigration Act 1987 is being committed or is likely to be committed (including if the person entered New Zealand); or
 - ii there is a person to whom section 128 of the Immigration Act 1987 applies (or would apply if the person entered New Zealand).

- d. The powers in Y3.60(c) above may be used in respect of all or any of the following places or premises:
- i any part of the foreshore; or
 - ii the shores or banks of any port, bay, harbour, lake, river, or other waters; or
 - iii any pier or such structure attached to or extending from any such shore or bank; or
 - iv any land or premises in any port, including any container base, Customs place, Customs controlled area, wharf, or transit building; or
 - v on board any ship or any other form of sea-borne vessel that is within the contiguous zone or territorial sea of New Zealand.

Effective 07/10/2002

Y3.65 Effect of international Conventions on refusing entry

As the Government recognises New Zealand's obligations under international law, it is essential that such obligations be taken into account when refusing entry. International obligations which may apply in such circumstances include but are not limited to:

- a. the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees;
- b. the 1948 Universal Declaration of Human Rights;
- c. the 1966 International Covenant on Civil and Political Rights and the optional Protocol relating to that Covenant;
- d. the 1989 Convention on the Rights of the Child and New Zealand's reservations to that Convention; and
- e. the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Effective 01/10/1999

Y3.70 Departure on first available craft of persons refused entry

- a. In the first instance, people refused entry are to be placed on the first available craft to take them from New Zealand.
- b. A craft is considered to be available if:
 - i it is travelling to a country to which the detained person has right of entry; and
 - ii the detained person has appropriate documentation to ensure entry to the country of destination will be allowed; or
 - iii (if the detained person lacks appropriate documentation) the country of destination has authorised entry; and
 - iv the person in charge of the craft is prepared to carry the detained person; and
 - v there is nothing else preventing the departure of the detained person.
- c. The person refused entry must be placed into custody only if:
 - i there is no craft available for a period of 24 hours; or
 - ii for any reason, an available craft:

- is no longer available to take the person from New Zealand; or
 - is, or is likely to be, delayed in New Zealand for more than 24 hours; or
- iii for any other reason the person is unable to leave New Zealand at the expected time.

Effective 01/10/1999

Y4 DETENTION PROVISIONS

IN THIS SECTION

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Y4.1 Detention of persons arriving at the border

Immigration Act 1987 ss 128, 128B

A person who arrives at the border may be detained if:

- a. they have been refused entry to New Zealand (see *Y3.1* (on page 3-1)) and are awaiting departure on the first available craft (see *Y3.70* (on page 3-10)); or
- b. that person is not exempt from having to hold a permit; and
 - i there is reason to suspect that:
 - section 7(1) of the Immigration Act 1987 may apply to that person; or
 - that person has no appropriate immigration documentation; or
 - any such documentation held appears to be false; and
 - ii a decision whether or not to grant that person a permit, or if the person holds a pre-cleared permit, to revoke that permit, has not been made because that person's status under section 7(1) cannot be immediately ascertained.

Note: only a Police officer may detain a person under section 128 or 128B.

Effective 01/10/1999

Y4.5 Placing persons refused entry

See previous policy *Y4.5* Effective 01/10/1999

- a. In the first instance, people refused entry must be placed on the first available craft (see *Y3.70* (on page 3-10)) to take them from New Zealand.
- b. An immigration officer may use their discretion bearing in mind the particular circumstances of the case, to determine whether a person who is refused entry, needs to be placed into custody, by considering if:
 - i a craft is available (see *Y3.70* (on page 3-10)) to take them on the same day; and
 - ii the officer is satisfied that the person cannot abscond from the airport facilities concerned; and

- iii the person concerned poses no security risk, as assessed in conjunction with the Police and airport security.
- c. The person refused entry will normally be placed into custody if:
 - i paragraph (b)(i) to (iii) above cannot be met; or
 - ii for any reason, an available craft:
 - is no longer available to take the person from New Zealand; or
 - is, or is likely to be, delayed in New Zealand for more than 24 hours; or
 - iii for any other reason the person is unable to leave New Zealand at the expected time.
- d. If an immigration officer determines that custody is necessary the officer must:
 - i ask the Police to detain the person in custody until departure; and
 - ii arrange the departure of the detained person; and
 - iii if applicable, serve a letter setting out the details of the infringement on the carrier.

Effective 04/12/2006

Y4.10 Detention of persons refused entry

See Y4.10 Effective 01/10/1999

Immigration Act 1987 s 128

- a. A person may be placed in custody until their departure from New Zealand on the first available craft (see Y3.70 (on page 3-10)) if that person:
 - i arrives in New Zealand from another country; and
 - ii is not exempt from having to hold a permit; and
 - iii is not a transit passenger or subject to section 128B; and
 - iv upon arrival:
 - fails to apply in the prescribed manner for a permit; or
 - is refused a permit; or
 - is a stowaway; or
 - has their pre-cleared permit revoked under section 35F of the Immigration Act 1987; and
 - v they must be placed into custody under Y3.70 (on page 3-10)(c).
- b. The detention provisions of section 128 may be applied to any person within 72 hours of that person's first contact with an Immigration officer since the person's arrival in New Zealand.
- c. A person detained under section 128 is deemed to be in New Zealand unlawfully, but as long as they are subject to section 128, Part II of the Immigration Act 1987 does not apply to them.
- d. A warrant of commitment must be obtained if the person is to be detained for more than 48 hours.
- e. If a warrant of commitment is necessary, it must be applied for within 48 hours of the person being taken into custody.

- f. A person detained under section 128 may not be granted bail, but a District Court Judge may order their release on reporting and other conditions under section 128A, if review proceedings are brought.

Effective 07/10/2002

Y4.15 Detention of persons whose eligibility for permit is not immediately ascertainable

Immigration Act 1987 s 128B

- a. A person who arrives at the border may be detained if:
- i that person is not exempt from having to hold a permit; and
 - ii there is reason to suspect that:
 - section 7(1) of the Immigration Act 1987 may apply to that person; or
 - that person has no appropriate immigration documentation; or
 - any such documentation held appears to be false; and
 - iii a decision whether or not to grant that person a permit, or if the person holds a pre-cleared permit, to revoke that permit, has not been made because that person's status under section 7(1) cannot be immediately ascertained.
- b. Such persons (including those who hold pre-cleared permits) are deemed to be in New Zealand unlawfully, but as long as they are subject to section 128B, Part II of the Immigration Act 1987 does not apply to them.
- c. A person who is to be detained under section 128B should first be given the option of departing voluntarily rather than being detained in custody.
- d. A warrant of commitment must be obtained if the person is to be detained for more than 48 hours.
- e. If a warrant of commitment is necessary, it must be applied for within 48 hours of the person being taken into custody.
- f. If it is considered that there are reasonable grounds for believing that section 7(1) applies to the person, the person must be given an opportunity to comment on or rebut those grounds.
- g. Section 128B continues to apply to the person until:
- i a determination is made that the person is not subject to section 7(1), in which case:
 - an immediate determination must be made as to whether or not to grant the person a permit; and
 - (if the person is granted a permit or already holds a pre-cleared permit) the person must be released immediately; or
 - (if no permit is to be granted to the person, and the person does not already hold a pre-cleared permit) the person is liable to be dealt with under section 128; or
 - ii a determination is made that section 7(1) applies to the person, in which case the person may then be:
 - treated as if section 128 applied to them; and
 - retained in custody until their departure from New Zealand on the first available craft (see Y3.70 (on page 3-10)); or
 - iii the person asks to be removed from New Zealand, in which case the person may be:
 - treated as if section 128 applied to them; and
 - retained in custody until their departure from New Zealand on the first available craft.

- h. A decision on whether or not section 7(1) of the Immigration Act 1987 applies to the person should be made as speedily as possible in the circumstances.
- i. No person detained under section 128B may be granted bail.

Effective 01/10/1999

Y4.20 Places of custody

Immigration Act 1987 ss 128(6) and (7), 128B(7) and (8)

- a. For the first 48 hours of detention the place of custody will normally be a Police station, unless:
 - i the Secretary of Labour has approved other premises; or
 - ii a Judge has directed that the person be detained in a penal institution; or
 - iii the detained person is an unmarried person under 17 years of age.
- b. An unmarried person under 17 years of age is to be detained in:
 - i any residence (within the meaning of section 2 of the Children and Young Persons Act 1974) or other premises under the control of, or approved by, the Director-General of Social Welfare; or
 - ii any other premises agreed to by the parent or guardian of that person and an immigration officer.
- c. If detention is to exceed 48 hours a warrant of commitment must be obtained (see Y4.35 (on page 4-5)) which will authorise detention in a penal institution or other premises approved by a District Court Registrar or Deputy Registrar.

Effective 01/10/1999

Y4.25 Right of access to counsel etc

Immigration Act 1987 s 140(4)

- a. Any person detained in custody under the Immigration Act 1987 has the right to contact a solicitor or counsel or any responsible adult, parent or guardian, and must be informed of that right.
- b. If the detainee chooses to exercise that right, the person nominated must be allowed access to the detainee and to communicate with the detainee in private.

Effective 01/10/1999

Y4.30 Bail

Immigration Act 1987 ss 128(15), 128B(12)

- a. A person detained under section 128 may not be granted bail, but a District Court Judge may order their release on reporting and other conditions if review proceedings are brought under section 128A.
- b. No person detained under section 128B may be granted bail.

Effective 01/10/1999

Y4.32 Release on conditions

Immigration Act 1987 ss 128A, 128AB, 128AC, 128AD

- a. Persons detained under Section 128 may be released on conditions on application of an Immigration Officer or the person concerned.

- b. Any application for the release on conditions must be made under oath to a district court judge and, on application, the district court judge may order the person's conditional release.

Effective 07/10/2002

Y4.35 Warrants of commitment

Immigration Act 1987 s 128(7), 128B(6)(c)

- a. A Registrar or Deputy Registrar of a District Court may issue a warrant of commitment to enable a person to be held in custody for a period no longer than 28 days if that person:
- i arrives in New Zealand from another country; and
 - ii is not exempt from having to hold a permit; and
 - iii upon arrival:
 - fails to apply in the prescribed manner for a permit; or
 - is refused a permit to enter New Zealand; or
 - is a stowaway; or
 - their pre-cleared permit has been revoked by an immigration officer under section 35F of the Immigration Act 1987; and
 - iv they must be placed into custody under Y3.70 (on page 3-10)(c).
- b. A District Court Judge may issue a warrant of commitment to enable a person to be held in custody for a period of 28 days if:
- i that person:
 - arrives in New Zealand from another country; and
 - is not exempt from having to hold a permit; and
 - ii there is reason to suspect that:
 - section 7(1) of the Immigration Act 1987 may apply to that person; or
 - that person has no appropriate immigration documentation; or
 - any such documentation held appears to be false; and
 - iii a decision whether or not to grant that person a permit, or if the person holds a pre-cleared permit, to revoke that permit, has not been made because that person's status under section 7(1) cannot be immediately ascertained.
- c. A warrant of commitment must be obtained if the person is to be detained under section 128 or 128B for more than 48 hours.
- d. If a warrant of commitment is necessary, it must be applied for within 48 hours of the person being taken into custody.

Y4.35.1 Extending a warrant of commitment

Immigration Act 1987 ss 128(13), (13A) and (13B), 128B(10)

- a. If a person who has been detained under a warrant of commitment issued under section 128 is, or is likely to be, unable to leave New Zealand before the period of detention authorised by the warrant expires, an officer may:
- i apply for an extension, or further extension, of the warrant; or
 - ii arrange for the release of the person by giving written notice to the Superintendent of the prison or person in charge of the other premises where the person is detained.
- b. An application for extension or further extension of a warrant must:
- i be made on oath; and

- ii include a statement of the reasons why the extension or further extension is requested.
- c. On application for an extension or further extension of a warrant, a District Court Judge may, if satisfied that section 128 still applies to the person, extend or further extend the warrant:
 - i for a further period not longer than 7 days; or
 - ii (if the person detained under the warrant is a member of a group of people who arrived in New Zealand on the same craft and of whom all or most are subject to section 128) for any longer period as the Judge thinks necessary in the circumstances to allow all the persons in the group to be properly dealt with.
- d. If, before the end of the 28 days of detention authorised by the warrant, a person detained under a warrant of commitment issued under section 128B(6)(c) is neither released and given a permit nor treated as subject to section 128:
 - i the person must be brought before a District Court Judge, who must:
 - consider the question of their continued custody under the warrant; and
 - extend the warrant if satisfied that the person is still subject to section 128B; and
 - ii then, while the person remains in custody, they must be brought before a Judge at intervals of not more than 7 days so that their continued custody may be further considered.

Y4.35.5 Release of persons detained under warrant of commitment

Immigration Act 1987 ss 128(14), 128A(4) and (5), 128B(5)

- a. If a person is detained under a warrant of commitment under section 128, the person must be released:
 - i following written notice from an immigration officer to the Superintendent of the prison or person in charge of the other premises where the person is detained; or
 - ii (if not released earlier) after the period of detention authorised by the warrant or any extension or further extension of the warrant expires; or
 - iii if ordered by a District Court Judge:
 - until review proceedings have been completed; or
 - after review proceedings have been completed.
- b. If a person who is detained under a warrant of commitment under section 128 is released under Y4.35.5 (on page 4-5)(a)(i) or (ii) above:
 - i section 128 no longer applies to that person; and
 - ii Part II of the Immigration Act 1987 (concerning persons unlawfully in New Zealand) applies to that person.
- c. If a person is detained under a warrant of commitment under section 128B, the person must be released if:
 - i it is determined that section 7(1) does not apply to the person; and
 - ii the person:
 - is granted a permit; or

- already holds a pre-cleared permit.

Effective 01/10/1999

Y4.40 Detention of minors

Immigration Act 1987 s 141B

- a. A minor who is to be detained under section 128 or 128B of the Immigration Act 1987 must have a responsible adult to represent their interests.
- b. A minor may be detained only in exceptional circumstances, and the approval of the Market Manager, Border & Investigations, is required for any such detention.

Y4.40.1 Definition of 'minor'

Immigration Act 1987 s 141B

A minor is an unmarried, dependent child who is under 17 years of age.

Y4.40.5 Nomination of responsible adult

Immigration Act 1987 s 141B

- a. If one or more of the minor's parents are also to be detained under section 128 or 128B, that parent:
 - i must represent the minor's interests; and
 - ii is the responsible adult for the minor.
- b. If a minor who is to be detained does not have a responsible adult to represent their interests, an immigration officer or, if appropriate, a Judge, must appoint one.
- c. A person may be appointed as a responsible adult only if:
 - i the person is 20 or more years of age; and
 - ii except in the case of a parent or guardian of the minor, the person is a New Zealand citizen or the holder of a residence permit; and
 - iii the person is any of the following:
 - a parent, guardian or relative of the minor; or
 - a person suggested by the minor; or
 - any other person having responsibility for the minor or who is otherwise suitable to represent the minor's interests; or
 - if no other suitable person is available, a person designated by the Director-General of Social welfare; and
 - iv (except in the case of a parent or guardian of the minor) the person agrees in writing to be appointed as a responsible adult.
- d. Should the need arise, and after reasonable consultation, a substitute responsible adult may be appointed.
- e. A responsible adult who is representing the interests of the minor in detention must supply an immigration officer with an address in New Zealand at which they may be notified of any matter concerning the minor.

Y4.40.10 Roles and rights of responsible adult

Immigration Act 1987 ss 141B, 141C

- a. The role of a responsible adult relates to those matters or proceedings for which the nomination was made.

- b. The role of responsible adult finishes when the minor leaves New Zealand.
- c. The responsible adult may appear and be heard in any District Court proceedings under the Immigration Act 1987 relating to the minor.
- d. To the extent practicable given the level of maturity and understanding of the minor, the responsible adult must try to find out the views of the minor and make them known on behalf of the minor, if appropriate.
- e. Any document that must be served on or notified to the minor must instead be served on or notified to the responsible adult, and such service or notification is presumed to be service on or notification to the minor.

Y4.40.15 Views of minor to be considered

Immigration Act 1987 s 141D

- a. In any matter relating to the detention of a minor, as far as practicable, the minor must be given an opportunity to express their views on a matter, whether personally or through a responsible adult.
- b. The immigration officer must give due weight to those views taking into account the minor's age and level of maturity and understanding.

Effective 01/10/1999

Y5 PERMITS GRANTED IN ERROR

IN THIS SECTION

Y5.1 Permits granted in error5-1

Y5.1 Permits granted in error

Immigration Act 1987 ss 19, 32

Immigration Regulations 1999 reg 12

- a. An immigration officer may revoke a temporary permit or residence permit if an administrative error in granting the permit is detected within the arrival hall at the Customs place, provided that the holder has not taken the permit out of the Customs place. Such a revocation will take effect immediately.
- b. A temporary permit is granted as a result of administrative error if:
 - i it is granted to:
 - a New Zealand citizen; or
 - a person who is exempt from having to hold a permit; or
 - ii it is granted to a person to whom section 7 of the Immigration Act 1987 applies; or
 - iii the person granting it intended to grant a permit of some type other than the one that was actually granted; or
 - iv it is granted contrary to:
 - any special direction; or
 - any instruction of a kind referred to in section 130(5) of the Immigration Act 1987; or
 - v it is granted contrary to Government policy, in terms of section 13A(1) of the Immigration Act 1987, applicable at the relevant time; or
 - vi it is granted for a period longer than that prescribed for permits of that type by the Immigration Regulations 1999; or
 - vii it is granted on the basis of an administrative error (of any of the types Y5.1(b)(i) to (vi) above) in determining an earlier application for a visa or permit.
- c. A residence permit is granted as a result of administrative error if:
 - i it is granted to:
 - a New Zealand citizen; or
 - a person who is exempt from having to hold a permit; or
 - ii it is granted to a person to whom section 7 of the Immigration Act 1987 applies; or
 - iii the person granting it intended to grant a temporary permit of some type rather than the residence permit that was actually granted; or
 - iv it is granted contrary to:
 - any special direction; or
 - any instruction of a kind referred to in section 130(5) of the Immigration Act 1987; or
 - the Government residence policy applicable at the relevant time; or
 - v it is granted on the basis of an administrative error (of any of the types Y5.1(c)(i) to (iv) above) in determining an earlier application for a visa or permit.

- d. If a temporary permit or residence permit granted in error is revoked and the person is still within the arrival hall (see Y5.5.1 below) where the error was made and discovered, the provisions of sections 128 or, if appropriate, 128B will apply, as if the person's application for a permit had been refused, unless:
 - i some other permit is granted; or
 - ii the person is a New Zealand citizen; or
 - iii the person is exempt from having to hold a permit.
- e. Customs staff designated as immigration officers may revoke a permit granted in error and grant a new permit in all cases unless they believe that the person does not meet the requirements for entry to New Zealand. In such cases the stamp must not be revoked but the matter must be referred to the duty immigration officer for investigation.
- f. If after making inquiries, the duty immigration officer is satisfied that such a person does meet entry requirements, the officer should revoke the permit granted in error and grant the correct permit .
- g. If an immigration officer is not satisfied that the person meets entry requirements, the officer may give the person a special direction under regulation 12 waiving the entry requirements and grant a permit if, after making enquiries and interviewing the person, the officer is satisfied that:
 - i there are compelling reasons why the person does not meet the entry requirements; and
 - ii the person has a genuine reason for visiting New Zealand.
- h. If appropriate, the officer should also consider enabling the person to meet entry requirements through purchasing tickets or arranging sponsorship.
- i. If a person is to be refused entry the permit must be revoked on the basis that it was issued in contravention of immigration policy.

Y5.1.1 Definition of 'arrival hall'

Immigration Act 1987 s 2

'Arrival hall' means a place licensed under the Customs and Excise Act 1996 for the processing of persons arriving in New Zealand.

Effective 01/10/1999

Y6 TRANSIT PASSENGERS

See previous policy Y6 Effective 01/10/1999

Immigration Act 1987 ss 2, 14E, 129
Immigration (Transit Visa) Regulations 2002

Effective 29/04/2002

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Y6.1 Definition of 'transit passenger'

Immigration Act 1987 ss 2, 129

Transit passengers are persons who:

- a. arrive in New Zealand from another country while in transit to another overseas destination; and
- b. throughout the whole period (up to a maximum of 24 hours from the time of arrival) that they are in New Zealand, remain:
 - i on board the craft they came to New Zealand on; or
 - ii in a Customs place (i.e. in the port or airport secure area); or
 - iii in the custody of the Police.

Effective 01/10/1999

Y6.5 Bona fide transit passengers

Immigration Act 1987 ss 14E, 129

- a. A bona fide transit passenger is one who:
 - i has a stated and genuine intention to be in New Zealand only for the purpose of reaching a further destination, and
 - ii will be confined to a transit area during the whole of their stay in New Zealand, and
 - iii will not be in New Zealand longer than 24 hours.
- b. Holders of transit visas may not remain in New Zealand for more than 24 hours.
- c. Holders of transit visas are not entitled to apply for any type of permit to be in New Zealand.

- d. If a person who holds a transit visa applies for any type of permit, an immigration officer may refuse their application, in which case section 128 of the Immigration Act 1987 will apply to that person.

Effective 01/10/1999

Y6.10 Contact with immigration officers

Immigration Regulations 1999 reg 12

- a. In most circumstances, immigration officers will not have contact with transit passengers, who will be confined to the transit area.
- b. If a transit passenger makes themselves known to an immigration officer in order to claim refugee status the officer should follow the procedures set out in Y7 (on page 7-1).

Effective 01/10/1999

Y7 REFUGEE STATUS CLAIMANTS

IN THIS SECTION

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Y7.1 Claims for refugee status at port of entry

Immigration Act 1987 ss 114Q, 129G(1)

- a. Under the guidelines set down by the UNHCR, New Zealand has a general obligation to admit asylum seekers who arrive at a port of entry and seek to have their claim for refugee status recognised.
- b. An indication of intent is all that is required to initiate the processing of a refugee claim.
- c. Officers should give due consideration to people who wish to claim refugee status, because they may be tired, disoriented, distressed, and incapable of communicating in English, either orally or in writing.
- d. People may express an intention to seek refugee status in a variety of ways, including, but not limited to, statements of the following kind:
 - i they have been persecuted; or
 - ii they are in fear of being persecuted; or
 - iii they have been imprisoned for political reasons; or
 - iv they are afraid of being imprisoned in their home country; or
 - v they want to "see the United Nations" (i.e. the United Nations High Commissioner for Refugees ("UNHCR")); or
 - vi they want to know if there is a United Nations office in New Zealand; or
 - vii they are "stateless" or "homeless" persons; or
 - viii they want to see a lawyer; or
 - ix they are afraid to return to their home country; or
 - x they will be killed if they are returned home; or
 - xi they simply "do not want to return".
- e. No person who is a refugee status claimant may be removed or deported from New Zealand until their refugee status has been finally determined.
- f. Unless the claim is "manifestly unfounded" or "clearly abusive" (see Y7.5 (on page 7-2)(b)) or the claimant is subject to section 7 of the Immigration Act 1987, the following permits may be granted:
 - i for the principal claimant, a work permit current for up to 6 months; and
 - ii for a dependant of school age, a student permit current for up to 6 months; and
 - iii for the spouse or partner of the principal claimant, a visitor permit current for up to 6 months.
- g. If the claimant is the holder of a limited purpose visa, the claimant, unless subject to section 7 of the Immigration Act 1987, should be granted a limited purpose permit for the

period required to achieve the express purpose for which they were issued the limited purpose visa.

- h. The claimant must be given a letter that sets out the date of interview with a refugee status officer and the conditions under which the interview will be conducted.
- i. If the claimant does not confirm their claim in the prescribed manner (see C4.20) at the border, they should be told that an application for a further limited purpose permit will only be considered after they have confirmed their claim in the prescribed manner.

Effective 01/10/1999

Y7.5 Detention of refugee claimants

- a. A permit may be refused, and a claimant may be detained under section 128 (or, if appropriate, section 128B) of the Immigration Act 1987 (see Y3 (on page 3-1)) so that a refugee status officer can formally determine their claim, if, after interviewing a claimant, a preliminary assessment indicates that:
 - i the claim for refugee status appears to be "abusive" or "manifestly unfounded"; or
 - ii section 7(1) of the Immigration Act 1987 applies.
- b. A refugee status claim is abusive or manifestly unfounded if:
 - i it is clearly fraudulent or unrelated to the criteria for granting refugee status laid down in the 1951 Convention Relating to the Status of Refugees; or
 - ii the claimant is claiming refugee status in an attempt to evade normal immigration requirements.
- c. The Market Manager, Border & Investigations, must be advised of any proposed detention of a refugee status claimant under section 128 or 128B.
- d. If a claimant is to be detained for a period longer than 48 hours a warrant of commitment must be obtained (see Y4.35 (on page 4-5)).
- e. If it is apparent that a claim for refugee status cannot be determined within the period of custody of 28 days, an officer may apply for an extension to the warrant (see Y4.35.1 (on page 4-5)).

Effective 01/10/1999