

Immigration (COVID-19 Response) Amendment Bill

Government Bill

Explanatory note

General policy statement

In May 2020, Parliament passed the Immigration (COVID-19 Response) Amendment Act 2020, which amended the Immigration Act 2009 (the **principal Act**) by giving the Government 8 time-limited powers to enable the immigration system to respond flexibly to challenges raised by the COVID-19 outbreak. In the order they appear in the principal Act, they are the power to—

- vary or cancel conditions for classes of resident visa class holders:
- impose, vary, or cancel conditions for classes of temporary entry visa class holders:
- waive any regulatory requirements for certain classes of application (that is, waive any prescribed requirements to make an application):
- grant visas to individuals and classes of people in the absence of an application:
- extend the expiry dates of visas for classes of people:
- waive the requirement to obtain a transit visa in an individual case or suspend a transit visa waiver made by regulations in an individual case:
- certify immigration instructions under which an immigration officer may revoke the entry permission of a person who has been deemed by regulations made under the principal Act to have been granted entry permission:
- make regulations suspending the ability to make applications for visas or to submit expressions of interest in applying for visas by classes of people.

These powers enable the Government to amend visa conditions for large groups of people, extend visas of large groups of people for varying periods of time (enabling staggered processing of further visa applications from those needing to remain in New Zealand), stop people overseas from making applications while it is not possible

to travel to New Zealand due to border restrictions, and enable the revocation of entry permission for people with deemed entry permission while border restrictions are in place.

These powers are subject to a range of safeguards, one of which is amended by this Bill. That safeguard is that all powers are automatically repealed 1 year after their commencement. However, while New Zealand's domestic situation has improved since the introduction of the powers, the global circumstances under which the powers were initially passed still stand—a continued border closure and global pandemic with wide-ranging impacts on temporary visa holders both onshore and offshore. The arguments for continuing to maintain flexibility in control over applications for temporary entry class visas and to maintain an ability to amend visa settings for whole classes of visa holders will remain until border restrictions are lifted.

Part 1 of the Bill (temporary powers relating to visas) extends the repeal date of the powers by a further 2 years, to the close of 15 May 2023. It also amends, to 6 months, the maximum duration of a suspension of the ability of certain offshore persons to make temporary entry class visa applications. Those suspensions are made by regulation, and, at present, can last for a maximum of 3 months at a time. The change is necessary because the suspension period has had to be renewed for a longer period of time than was initially envisaged, and the frequency of renewal is burdensome. In addition, the current suspension period may be giving intending visa applicants the impression that the border will open soon, when that is not the case.

The other major safeguards will continue. First, the majority of the powers need to be exercised by special directions, which are disallowable instruments tabled in the House of Representatives, while one (the ability to suspend applications) requires an Order in Council. Second, the decision maker must be satisfied that the exercise of the power (such as the making of the special direction) is reasonably necessary to manage the effects or deal with the consequences of—

- the outbreak of COVID-19; or
- measures under enactments to contain or mitigate the outbreak of COVID-19 or its effects; or
- other measures (in New Zealand or elsewhere) to contain or mitigate the outbreak of COVID-19 or its effects.

Finally, the majority of the powers can only be exercised to benefit (or at least not disadvantage) visa holders. The major exception to this, the power to suspend the ability of certain offshore persons from making temporary entry class visa applications, has a further safeguard in that the power must be exercised by regulation.

Part 2 of the Bill (modifications of principal Act in connection with temporary powers) extends, to the close of 15 May 2023, the repeal date of a series of modifications made to the principal Act in the light of the temporary powers relating to visas.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

<http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2021&no=24>

Clause by clause analysis

The Immigration (COVID-19 Response) Amendment Act 2020 (the **Amendment Act 2020**) inserted into the Immigration Act 2009 (the **principal Act**) provisions responding to the COVID-19 outbreak. Currently, those provisions are to be repealed on 15 May 2021 (12 months after the Amendment Act 2020 came into force). This Bill extends this date by 2 years to the close of 15 May 2023 (the **new repeal date**). The Bill also extends from 3 months to 6 months the period during which regulations made under section 401A of the principal Act may suspend the ability to apply for visas or submit expressions of interest.

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 provides that the Bill amends the principal Act.

Part 1

Temporary powers relating to visas

Clause 4 amends section 50(4E) of the principal Act. The effect of the amendment is that the Minister's powers to vary travel conditions, and to vary or cancel employment conditions of resident visas for classes of visa holders, in consequence of the COVID-19 outbreak, will now be repealed on the new repeal date.

Clauses 5 and 6 amend sections 52(4E) and 53(4E) of the principal Act. The effect of the amendments is that the Minister's powers to impose, vary, or cancel the conditions of temporary entry class visas for classes of visa holders, in consequence of the COVID-19 outbreak will now be repealed on the new repeal date.

Clause 7 amends section 57(7) of the principal Act. The effect of the amendment is that the Minister's power to waive the usual visa application requirements for classes of applicants, in consequence of the COVID-19 outbreak, will now be repealed on the new repeal date.

Clause 8 amends section 61A(7) of the principal Act. The effect of the amendment is that the Minister's power to grant visas of their own volition, in consequence of the COVID-19 outbreak, will now be repealed on the new repeal date.

Clause 9 amends section 78(2B) of the principal Act (deemed extension of temporary entry class visa expiring during epidemic) in connection with *clause 10*.

Clause 10 amends section 78A(7) of the principal Act. The effect of the amendment is that the Minister's power to extend temporary entry class visas by up to 6 months for classes of visa holders, in consequence of the COVID-19 outbreak, will now be repealed on the new repeal date.

Clause 11 amends section 86(4C) of the principal Act. The effect of the amendment is that the Minister's power to waive the requirement for an individual to hold a transit visa or to suspend a transit visa waiver in an individual case, in consequence of the COVID-19 outbreak, will now be repealed on the new repeal date.

Clause 12 amends section 113A(8) of the principal Act. Section 113A applies if a person's entry permission is deemed to be granted under regulations made under the principal Act. The effect of the amendment is that an immigration officer's power to revoke entry permission if permitted or required by immigration instructions under the principal Act will now be repealed on the new repeal date.

Clause 13 amends section 378 of the principal Act (special directions). The amendment is consequential on the amendments to sections 50, 52, 53, 57, 61A, and 78A.

Clause 14 amends section 380 of the principal Act (delegation of Minister's powers). The amendment is consequential on the amendments to sections 50, 52, 53, 57, 61A, and 78A.

Clause 15 amends section 401A of the principal Act. Currently, section 401A authorises regulations to be made that suspend for up to 3 months the ability to apply for a particular class or type of visa or submit an expression of interest in obtaining an invitation to apply for a particular class or type of visa. The effect of the amendments is to extend the suspension period to up to 6 months at a time and to repeal section 401A on the new repeal date.

Clause 16 amends section 401B of the principal Act. The amendment is connected to the amendment to section 401A and has the effect that section 401B will be repealed on the new repeal date.

Part 2

Modifications of principal Act in connection with temporary powers

Clause 17 amends section 403B. The effect of the amendment is that the modifications in Schedule 6 of the principal Act, which apply in connection with the amendments made in response to the COVID-19 outbreak, are now repealed on the new repeal date.

Hon Kris Faafoi

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Part 2
Modifications of principal Act in connection with temporary powers

- 17 Section 403B amended (Modifications of Act relating to COVID-19 outbreak) 4

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Immigration (COVID-19 Response) Amendment Act **2021**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Immigration Act 2009 (the **principal Act**).

Part 1
Temporary powers relating to visas 10

4 Section 50 amended (Conditions on resident visas)

In section 50(4E), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”.

5 Section 52 amended (Conditions on temporary entry class visas (other than those subject to restricted temporary entry instructions)) 15

In section 52(4E), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”.

6 Section 53 amended (Conditions on temporary entry class visas subject to restricted temporary entry instructions) 20

In section 53(4E), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”.

7 Section 57 amended (Applications for visas) 25

In section 57(7), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”.

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- 8 Section 61A amended (Grant of visas by special direction)**
In section 61A(7), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”.
- 9 Section 78 amended (Deemed extension of temporary entry class visa expiring during epidemic)** 5
In section 78(2B), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”.
- 10 Section 78A amended (Extension of temporary entry class visa by special direction)** 10
In section 78A(7), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”.
- 11 Section 86 amended (Who must obtain transit visa)** 15
In section 86(4C), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”.
- 12 Section 113A amended (Revocation of deemed entry permission)**
In section 113A(8), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”. 20
- 13 Section 378 amended (Special directions)**
In section 378(2A), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”. 25
- 14 Section 380 amended (Delegation of Minister’s powers)**
In section 380(1A), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”. 30
- 15 Section 401A amended (Regulations relating to suspending ability to make applications for visas and expressions of interest)**
- (1) In section 401A(5), replace “3” with “6”.
- (2) In section 401A(6), replace “3” with “6”.
- (3) In section 401A(8), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”. 35

16 Section 401B amended (Provisions relating to regulations made for purposes of section 401A)

In section 401B(4), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”. 5

Part 2**Modifications of principal Act in connection with temporary powers****17 Section 403B amended (Modifications of Act relating to COVID-19 outbreak)**

In section 403B(2), replace “immediately after the expiry of the 12-month period that starts on the date on which the Immigration (COVID-19 Response) Amendment Act 2020 comes into force” with “at the close of 15 May 2023”. 10