



ANALYSIS

<p>Title</p> <p>1. Short Title</p> <p style="text-align: center;">PART I</p> <p style="text-align: center;">PRE-CLEARED PERMIT SYSTEM</p> <p>2. New heading and sections inserted</p> <p style="padding-left: 2em;"><i>Special Provisions Applying to Pre-Cleared Permits</i></p> <p>35b. Pre-cleared permits</p> <p>35c. Minister may designate pre-clearance flights</p> <p>35d. Applications for pre-cleared permits</p> <p>35e. Grant of pre-cleared permit</p> <p>35f. Revocation of pre-cleared permit by immigration officer</p> <p>35g. Expiry of pre-cleared permit in certain circumstances</p> <p>35h. Responsibilities of carrier in relation to pre-clearance flights</p> <p>35i. Pre-cleared permit holders not required to undergo immigration procedures on arrival in New Zealand</p>	<p style="text-align: center;">PART II</p> <p style="text-align: center;">RELATED AMENDMENTS</p> <p>3. Interpretation</p> <p>4. Persons who may apply for residence permits</p> <p>5. Residence permit holders temporarily absent from New Zealand</p> <p>6. Revocation of residence permit by Minister</p> <p>7. Applications for temporary permits</p> <p>8. Currency of temporary permits</p> <p>9. Grant of permits</p> <p>10. Evidence of permit or exemption to be retained</p> <p>11. Responsibilities of carrier and person in charge of any craft</p> <p>12. Responsibilities of persons arriving in or leaving New Zealand</p> <p>13. Detention and departure of persons refused permits, etc.</p> <p>14. Detention of persons whose eligibility for permit is not immediately ascertainable</p> <p>15. Evidence in proceedings</p>
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1993, No. 100

An Act to amend the Immigration Act 1987

[15 September 1993]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Immigration Amendment Act 1993, and shall be read together with and deemed part of the Immigration Act 1987 (hereinafter referred to as the principal Act).

PART I

PRE-CLEARED PERMIT SYSTEM

2. New heading and sections inserted—The principal Act is hereby amended by inserting, after section 35A (as inserted

by section 18 of the Immigration Amendment Act 1991), the following heading and sections:

“Special Provisions Applying to Pre-Cleared Permits

“35B. **Pre-cleared permits**—(1) A pre-cleared permit is a temporary permit or a residence permit applied for and granted in another country in accordance with this Act to a person intending to travel to New Zealand on a flight designated by the Minister as a pre-clearance flight under section 35c of this Act.

“(2) Except as specifically provided in this Act, the provisions of this section and sections 35c to 35i of this Act apply in relation to pre-cleared permits in addition to and not in derogation from the provisions of sections 16 to 35A or sections 36 to 41 or any other provision of this Act.

“35C. **Minister may designate pre-clearance flights**—The Minister may from time to time, and in such manner as the Minister considers appropriate, designate as pre-clearance flights any—

“(a) Individual flight to New Zealand from another country;
or

“(b) Any class of such flights,—
and any person intending to travel on any such flight may, subject to this Act, apply for and be granted a pre-cleared permit.

“35D. **Applications for pre-cleared permits**—(1) The following persons may apply under section 25 of this Act for a pre-cleared temporary permit:

“(a) Any person intending to travel on a pre-clearance flight who holds a current student visa, work visa, or visitor’s visa and who wishes to be granted a pre-cleared student permit, pre-cleared work permit, or pre-cleared visitor’s permit, as the case may be:

“(b) Any person intending to travel on a pre-clearance flight who is exempt from the requirement to apply for and hold a visa to travel to New Zealand and who wishes to be granted a pre-cleared temporary permit.

“(2) The following persons may apply under section 17 of this Act for a pre-cleared residence permit:

“(a) Any person intending to travel on a pre-clearance flight who is the holder of a current residence visa and who wishes to be granted a pre-cleared residence permit:

“(b) Any person intending to travel on a pre-clearance flight who is exempt from the requirement to apply for and hold a residence visa and who wishes to be granted a pre-cleared residence permit.

“(3) The following persons are entitled to be granted a pre-cleared residence permit under section 18 of the Act:

“(a) Any person intending to travel on a pre-clearance flight who—

“(i) Holds a returning resident’s visa; and

“(ii) Applies in the prescribed manner for a pre-cleared resident permit during the currency of that visa:

“(b) Any person intending to travel on a pre-clearance flight who—

“(i) Being the holder of a residence permit is granted by the Government of New Zealand a refugee travel document in accordance with the Refugee Convention for the purpose of travel outside New Zealand; and

“(ii) Applies in the prescribed manner for a pre-cleared residence permit during the period of validity of that document.

“(4) An application for a pre-cleared permit shall be made in the prescribed manner.

“35E. **Grant of pre-cleared permit**—(1) A pre-cleared permit shall be granted by being entered and retained (either electronically or otherwise) in the records of the Department of Labour.

“(2) Every pre-cleared permit shall specify—

“(a) The name of the permit holder:

“(b) The passport number of the permit holder or, where the person is accepted for travel without a passport, the permit holder’s date of birth and nationality (if known):

“(c) The date on which the permit is granted (being that date in the country in which it is granted):

“(d) Either—

“(i) The date on which it will expire; or

“(ii) The period for which it is granted.

“(3) Where a pre-cleared temporary permit specifies the period for which it is granted, rather than the date on which it will expire, that period shall commence to run on and from the date specified in the permit under subsection (2) (c) of this section as if the permit had been granted on that specified date

in New Zealand, notwithstanding any date or time differences between New Zealand and the country in which the permit was granted.

“(4) A person who holds a pre-cleared permit may request a copy of the permit in the prescribed manner and, subject to subsection (5) of this section, is entitled on such request made in New Zealand to receive forthwith, in an approved form, a copy of the permit.

“(5) No person who is the holder of a pre-cleared permit is entitled to be given a copy of that permit in the country in which the permit is granted, or while in transit, or at any time before the person has left the examination station at the customs airport at which the person arrives in New Zealand.

“(6) Where any pre-cleared permit is granted in the manner set out in subsection (1) of this section, the information so entered and retained in the records of the Department of Labour shall, in the absence of evidence to the contrary, be deemed to be correct for the purposes of this Act, notwithstanding any differences between that information and any information contained in any copy of the permit given to the holder of the permit.

“35F. **Revocation of pre-cleared permit by immigration officer**—(1) Where any immigration officer is satisfied on reasonable grounds that—

“(a) A pre-cleared residence permit has been granted to any person as a result of administrative error within the meaning of section 19 of this Act; or

“(b) A pre-cleared temporary permit has been granted to any person as a result of administrative error within the meaning of section 32 of this Act,—

the immigration officer may revoke the permit at any time before the person leaves the examination station at the customs airport at which the person arrives in New Zealand, and any such revocation shall take effect immediately.

“(2) Where a pre-cleared permit is revoked under this section, then, unless some other permit is granted to the person, or the person is exempt under this Act from the requirement to hold a permit, the provisions of section 128 of this Act shall apply as if the person’s application for a permit had been refused.

“(3) A revocation under this section shall be made in a manner approved by the Minister.

“35G. **Expiry of pre-cleared permit in certain circumstances**—Where the holder of a pre-cleared permit—

“(a) Fails for any reason to travel on the pre-clearance flight in respect of which the permit was granted; or

“(b) Embarks on the pre-clearance flight but, before arriving in New Zealand, is forced to return to the country of embarkation, or land in any country other than New Zealand, whether by reason of any emergency affecting the craft or otherwise,—

the pre-cleared permit shall be deemed to expire with effect from—

“(c) The time at which the pre-clearance flight commenced, where the person fails to travel on the pre-clearance flight; or

“(d) The time at which the pre-clearance flight returns to the country of embarkation, or lands in the country other than New Zealand, in any other case.

“**35H. Responsibilities of carrier in relation to pre-clearance flights**—For the purposes of this Act, the carrier and the person in charge of any craft on a pre-clearance flight shall ensure that all persons boarding the craft at the beginning of the pre-clearance flight—

“(a) Hold a pre-cleared permit; or

“(b) Are exempt under this Act from the requirement to hold a permit; or

“(c) Are persons to whom section 129 (1) of this Act will apply.

“**35I. Pre-cleared permit holders not required to undergo immigration procedures on arrival in New Zealand**—The holder of a pre-cleared permit who arrives in New Zealand on a pre-clearance flight is exempt from the requirement to undergo the immigration procedures specified in section 126 (1) (a) of this Act.”

PART II

RELATED AMENDMENTS

3. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “immigration officer” (as amended by section 2 (4) of the Immigration Amendment Act 1991), and substituting the following definition:

“ ‘Immigration officer,’—

“(a) In every Part of this Act, means the Secretary of Labour, and every other officer of the Department of Labour designated by the Secretary as an immigration officer under section 133 of this Act; and

“(b) In Parts I and VI and sections 127, 130, 131, 136, 142, and 143 of this Act, includes any customs officer designated by the Secretary of Labour as an immigration officer, whether individually or by class or position; and

“(c) In Parts I and VI and sections 130, 131, 142, and 143 of this Act, includes any person who—

“(i) Is in the service of the Government of another country; or

“(ii) Acts as an agent for the Government of New Zealand for pre-clearance purposes,—
and who is designated by the Secretary of Labour as an immigration officer, whether individually or by class or position.”.

(2) Section 2 (1) of the principal Act is hereby further amended by adding to the definition of the term “permit” the words “and a pre-cleared permit of whatever type”.

(3) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term “port of entry”, the following definitions:

“‘Pre-clearance’ means the process relating to the application for and granting of pre-cleared permits and includes all functions and activities incidental thereto, including the revocation of pre-cleared permits:

“‘Pre-clearance flight’ means any flight that the Minister designates as a pre-clearance flight under section 35c of this Act:

“‘Pre-cleared permit’ means a pre-cleared permit within the meaning of section 35B (1) of this Act.”.

(4) Section 2 (4) of the Immigration Amendment Act 1991 is hereby consequentially repealed.

4. Persons who may apply for residence permits—

(1) Section 17 (1) of the principal Act (as substituted by section 9 of the Immigration Amendment Act 1991) is hereby amended by repealing paragraph (b) (as amended by section 3 (2) of the Immigration Amendment Act 1992), and substituting the following paragraphs:

“(b) Any person in New Zealand who is the holder of a temporary permit, other than—

“(i) The holder of a pre-cleared temporary permit while that person is still in the examination station at the customs airport at which the person arrives in New Zealand; or

“(ii) The holder of a temporary permit that is subject to the condition specified in section 27A (2) of this Act:

“(c) In the case of a pre-cleared residence permit, any person specified in section 35D (2) of this Act.”

(2) Section 3 (2) of the Immigration Amendment Act 1992 is hereby consequentially repealed.

5. Residence permit holders temporarily absent from New Zealand—Section 18 of the principal Act (as substituted by section 9 of the Immigration Amendment Act 1991) is hereby amended by adding the following paragraph:

“(c) In the case of a pre-cleared residence permit, any person specified in section 35D (3) of this Act.”

6. Revocation of residence permit by Minister—Section 20 (1) of the principal Act is hereby amended by omitting the words “on either of”, and substituting the words “on any of”.

7. Applications for temporary permits—Section 25 (1) of the principal Act (as substituted by section 14 of the Immigration Amendment Act 1991) is hereby amended by adding the following paragraph:

“(e) In the case of a pre-cleared temporary permit, any person specified in section 35D (1) of this Act.”

8. Currency of temporary permits—(1) Section 26 (2) of the principal Act is hereby amended by inserting, after the words “Every temporary permit”, the words “which is not a pre-cleared permit”.

(2) Section 26 of the principal Act is hereby amended by adding the following subsection:

“(3) Every pre-cleared temporary permit shall specify the matters required by section 35E (2) (c) and (d) of this Act.”

9. Grant of permits—(1) Section 35 (3) of the principal Act is hereby amended—

(a) By inserting at the beginning of paragraph (b) the words “Except in the case of a pre-cleared permit,”;

(b) By adding to paragraph (b) the expression “; and”.

(2) Section 35 (3) of the principal Act is hereby further amended by adding the following paragraph:

“(c) In the case of a pre-cleared permit, be entered and retained in the records of the Department of Labour in accordance with section 35E of this Act.”

10. Evidence of permit or exemption to be retained—Section 38 (1) of the principal Act is hereby amended by inserting, after the words “every holder of a permit”, the words “, other than a pre-cleared permit,”.

11. Responsibilities of carrier and person in charge of any craft—(1) Section 125 (2) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) In the case of a pre-clearance flight, to comply with section 35H of this Act.”.

(2) Section 125 (4) (a) of the principal Act is hereby amended by omitting from subparagraph (i) the words “a permit on arrival in New Zealand”, and substituting the words “a permit or pre-cleared permit on or before arrival in New Zealand”.

12. Responsibilities of persons arriving in or leaving New Zealand—Section 126 (1) of the principal Act is hereby amended by inserting, at the beginning of paragraph (a), the words “Except where the person is the holder of a pre-cleared permit,”.

13. Detention and departure of persons refused permits, etc.—Section 128 (1) (c) of the principal Act is hereby amended by repealing subparagraph (iii), and substituting the following subparagraphs:

“(iii) Is a stowaway; or

“(iv) Is a person whose pre-cleared permit has been revoked by an immigration officer pursuant to section 35F of this Act.”

14. Detention of persons whose eligibility for permit is not immediately ascertainable—(1) Section 128B (1) of the principal Act (as inserted by section 38 of the Immigration Amendment Act 1991) is hereby amended by inserting, after the words “whether or not to grant that person a permit”, the words “or, in the case where the person holds a pre-cleared permit, as to whether or not to revoke that permit,”.

(2) Section 128B (2) of the principal Act (as so inserted) is hereby amended by inserting, after the words “to whom this

section applies”, the words “(including any such person who holds a pre-cleared permit)”.

(3) Section 128^B (5) of the principal Act (as so inserted) is hereby amended by inserting in paragraph (a), after the words “shall be released forthwith and”, the words “, unless the person already holds a pre-cleared permit,”.

15. Evidence in proceedings—Section 143 (1) of the principal Act is hereby amended by inserting in paragraph (c), before the word “until”, the words “on or”.

This Act is administered in the Department of Labour.
