



THE TOKELAU IMMIGRATION REGULATIONS 1991

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 1st day of July 1991

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Tokelau Act 1948, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Tokelau Immigration Regulations 1991.

(2) These regulations shall come into force on the 1st day of August 1991.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“Applicant” means a person who applies for a permit:

“Certificate of identity” means a current document issued by the Government of any country to any person for the purposes of facilitating that person’s entry into or exit from any country, being a document that purports to establish the identity but not the nationality of that person and confers on that person the right to enter the country whose Government issues the document:

“Current”, in relation to a permit, means that the permit is in force and has not ceased to be current under regulation 10 (3) of these regulations:

“Passport” means—

(i) A current document issued by or on behalf of the Government of any country that purports to establish the identity and nationality of the holder and that confers on the holder the right to enter the country whose Government has issued the document; and

(ii) In the case of a person who does not hold such a document, a certificate of identity:

“Permit” means a visitors permit, a residence permit, a work permit, or a special permit:

“Vessel” means any boat or aircraft:

“Work” means paid employment or the earning of income in Tokelau other than from a savings account.

3. Rights of Tokelauans who are New Zealand citizens protected—No New Zealand citizen who is a Tokelauan requires a permit to be in Tokelau or to visit or reside or work in Tokelau.

4. Requirements for New Zealand citizens—A New Zealand citizen who is not a Tokelauan does not require a permit to enter Tokelau, but—

(i) May not be in Tokelau following the expiry of a period of 10 days after entering Tokelau from another country unless that person holds a current permit:

(ii) May not work in Tokelau unless that person holds a current work permit or a current special permit that authorises the person to work in Tokelau.

5. Requirements for persons who are not New Zealand citizens—A person who is not a New Zealand citizen—

(i) May not be in Tokelau unless that person holds a current permit:

(ii) May not work in Tokelau unless that person holds a current work permit or a current special permit that authorises the person to work in Tokelau.

6. Persons unlawfully in Tokelau—Any person who is in Tokelau in contravention of regulation 4 or regulation 5 of these regulations is in Tokelau unlawfully.

7. Types of permit—The following types of permit may be granted in accordance with these regulations:

- (i) Visitors permits, which allow the permit holder to be in Tokelau for a period not exceeding 10 days;
- (ii) Residence permits, which allow the permit holder to reside in Tokelau for a period not exceeding 3 months;
- (iii) Work permits, which allow the permit holder to reside and work in Tokelau for a period not exceeding 3 months;
- (iv) Special permits, which may be granted for a period not exceeding 1 year and, unless otherwise specified by the Administrator, allow the permit holder to reside and work in Tokelau during the currency of the permit.

8. Application for permit—(1) A person who wishes to obtain a permit may apply to any of the following:

- (i) An Administration Officer in Tokelau, and such other persons in Tokelau as may be designated by the Administrator;
- (ii) The Administrator in New Zealand;
- (iii) The Office for Tokelau Affairs in Western Samoa;
- (iv) Any New Zealand diplomatic or consular post elsewhere.

(2) An applicant shall—

- (i) Complete Form 1 in the Schedule to these regulations; and
- (ii) Pay an application fee of NZ\$20 for each application lodged; and
- (iii) Provide such relevant information as the Administrator may require.

9. Grant of permit—(1) Subject to the provisions of this regulation, the Administrator may grant or refuse to grant a permit as the Administrator thinks fit, and may grant such type of permit as the Administrator thinks fit regardless of the type for which application is made.

(2) Except where the Administrator considers that there is good reason why any provision of this subclause should not apply, no visitors permit or residence permit or work permit shall be granted—

- (i) Unless the Administrator is satisfied that the applicant has or will have sufficient means of support while in Tokelau; or
- (ii) If, during the currency of the permit, the applicant will or is likely to need medical or other similar treatment or facilities that are not usually available in Tokelau; or
- (iii) If the applicant has an infectious or contagious medical condition contracted outside Tokelau; or
- (iv) If the Village Council of any island concerned has not approved accommodation arrangements for the applicant; or
- (v) If it appears to the Administrator that the applicant intends to carry out an illegal purpose in Tokelau; or
- (vi) Unless the Village Councils of all islands concerned otherwise direct, if the applicant has in any country been convicted of an offence and sentenced to imprisonment for a term of 11 months or more; or
- (vii) If the applicant has previously been the subject of a removal order issued under regulation 15 of these regulations.

(3) A work permit shall not be granted without the approval of the Village Councils of each of the 3 islands.

(4) An Administration Officer or a constable shall, unless the Officer or constable considers that there is good reason not to do so, grant a visitors permit to—

- (i) Any person who is passing through Tokelau in transit to another country;
- (ii) Any member of the crew of a vessel that enters Tokelau for a legitimate and temporary purpose;
- (iii) Any person who is shipwrecked or in Tokelau by similar force of circumstance.

(5) A permit granted under these regulations shall be in Form 2 in the Schedule to these regulations.

10. Currency of permit—(1) A permit may be granted for any period not exceeding the period specified for the relevant type of permit in regulation 7 of these regulations.

(2) Every permit shall specify—

- (i) The date on which it comes into force; and
- (ii) Either the date on which it will expire or the period for which it is granted.

(3) A permit ceases to be current—

- (i) On the date or at the end of the period specified under subclause (2) (ii) of this regulation; or
- (ii) On being revoked under regulation 12 of these regulations; or
- (iii) On the holder of the permit leaving Tokelau for an overseas destination,—

whichever occurs first.

11. Permits may be subject to conditions—(1) A permit may be granted subject to such reasonable conditions, whether as to the permit holder's accommodation arrangements or work or otherwise, as the Administrator (or where appropriate the person granting a visitors permit under regulation 9 (4) of these regulations) thinks fit to impose.

(2) The Administrator (or where appropriate the person granting the visitors permit) may at any time revoke or vary any condition, or add any further condition.

12. Revocation of permits—(1) The Administrator may at any time revoke a permit if the Administrator considers that there is good reason to do so in the interests of Tokelau.

(2) Except where the Administrator considers there are special circumstances that make it inappropriate to do so, the Administrator shall not revoke a permit without first informing the permit holder of the Administrator's intention and considering any reasons the holder advances as to why the permit should not be revoked.

(3) Any revocation under this regulation shall be notified to the person whose permit is revoked in writing and shall take effect on receipt by that person of the notification.

(4) For the purposes of subclause (1) of this regulation (and without restricting the circumstances in which the Administrator may revoke a permit in the interests of Tokelau), good reason for revoking a permit exists if—

- (i) The permit holder is convicted of an offence in Tokelau and sentenced to imprisonment or a fine exceeding \$100; or
- (ii) The permit holder is convicted of an offence under regulation 18 of these regulations; or
- (iii) The permit holder fails to honour or comply with a condition of the permit, and is given notice to that effect by the Village Council of the relevant atoll; or
- (iv) It appears to the Administrator that the applicant does not have sufficient means of support in Tokelau; or
- (v) The permit holder needs or is likely to need medical or other similar treatment that is not available in Tokelau; or
- (vi) The permit holder has an infectious or contagious medical condition contracted outside Tokelau; or
- (vii) The Village Council of the relevant island notifies the Administrator that it does not approve the accommodation arrangements of the permit holder.

13. Grant of further permit—(1) A permit holder who is in Tokelau may at any time before the expiry of the holder's current permit apply to an Administration Officer, or any person designated by an Administration Officer for the purpose, for the grant of a new permit, and shall supply such information as the Administrator or designated person may require for the purpose of considering the application.

(2) Where a new permit is granted to a person applying under this regulation, that permit may be evidenced by either—

- (i) Issuing a new permit in Form 2 in the Schedule to these regulations; or
- (ii) Endorsing the person's existing permit with the new relevant date of expiry or period of currency of the permit.

14. Immigration procedures—(1) Every person who enters Tokelau shall, on request by an Administration Officer or constable, produce for inspection—

- (i) The person's passport; and
- (ii) Where applicable, the person's permit issued under these regulations.

(2) The Administration Officer on each island shall keep a record of all persons (other than Tokelauans who are New Zealand citizens) who enter and leave that island.

15. Order for removal from Tokelau—(1) The Administrator or an Administration Officer may issue a removal order in Form 3 in the Schedule to these regulations ordering the removal from Tokelau of any person who is unlawfully in Tokelau.

(2) A removal order authorises any constable or the Administration Officer or any person authorised by the Administration Officer to use such reasonable force as may be necessary (including detention for a period not exceeding 24 hours) to ensure that the person to whom the order applies is placed on board any vessel for the purpose of effecting the person's removal from Tokelau.

(3) Removal under this regulation shall be by the first available vessel on which it is practicable for the person to leave, and shall be subject to such conditions as the Administrator or Administration Officer may direct.

(4) All costs incurred in removing a person from Tokelau under this regulation—

- (i) May be paid from the Tokelau Administration Account;
- (ii) Shall be recoverable as a debt due to the Crown from the person removed (or, in the case of a minor, from the person's parent or guardian), and any sum so recovered shall be paid into the Tokelau Administration Account.

(5) A constable or Administration Officer or person authorised by an Administration Officer is not guilty of an offence and is not liable to any civil proceedings in respect of any reasonable force used by that constable, Administration Officer, or person in good faith for the purpose of ensuring that a person in respect of whom a removal order has been issued under this regulation is removed from Tokelau in accordance with this regulation.

16. Visiting vessels—(1) The master of a vessel that arrives in Tokelau shall, on request by an Administration Officer or a constable, furnish full details of the persons on board the vessel.

(2) The master of any vessel that transports to Tokelau a person who may not lawfully be in Tokelau shall, at the master's cost, transport that person from Tokelau at the earliest practical opportunity.

(3) The master of any vessel that is to leave Tokelau for an overseas destination shall—

- (i) Subject to the payment of an appropriate fee, and subject always to the safety of the vessel and persons on board the vessel, allow on board for passage from Tokelau any person who is subject to a removal order under regulation 15 of these regulations; and
- (ii) Take all such reasonable steps (including the use of reasonable force) as may be necessary to detain any such person on board the vessel until it has left the territorial limits of Tokelau.

(4) The master of a vessel, and any person acting for the master, is not guilty of an offence and is not liable to civil proceedings in respect of any reasonable force used by the master or person in good faith for the purpose of detaining a person in accordance with subclause (3) of this regulation.

17. Delegations—(1) Subject to subclause (2) of this regulation, the Administrator may delegate any of the powers conferred on the Administrator by these regulations in accordance with regulation 5 of the Tokelau Administration Regulations 1980*.

(2) The Administrator shall not delegate to any person other than the Official Secretary or an Administration Officer the power to revoke a permit or to issue a removal order.

18. Offences and penalty—Every person commits an offence, and is liable on conviction to a fine not exceeding \$150 and to imprisonment for a term not exceeding 3 months, who—

- (i) In applying for any permit, makes any statement or supplies information knowing that it is false or misleading in any material respect; or
- (ii) Fails to produce the person's passport or, where appropriate, permit, when required to do so under regulation 14(1) of these regulations; or

- (iii) Contravenes or fails to comply with subclause (1) or subclause (2) or subclause (3) of regulation 16 of these regulations; or
- (iv) Resists or intentionally obstructs any constable or other person acting in accordance with the terms of a removal order issued under regulation 15 of these regulations.

19. Jurisdictional matters—Any question whether or not—

- (i) To grant a permit to any person and (if so) for what period; or
- (ii) To impose, vary, or cancel any condition of a permit; or
- (iii) To revoke any permit,—

is a matter for the discretion of the Administrator, or for the Administrator's delegate or other person having the relevant power under these regulations, and no appeal shall lie to any Court against the decision of the Administrator or other person on any such question.

20. Proceedings—In any proceedings brought under these regulations, or in any proceedings relating to the exercise of or failure to exercise any power referred to in these regulations, a certificate signed by the Administrator or the Official Secretary or an Administration Officer or a constable and containing a statement in relation to any person to the effect that—

- (i) The person is not a Tokelauan; or
- (ii) The person is not a New Zealand citizen; or
- (iii) The person holds or at any material time held, or does not hold or did not at any material time hold, a permit; or
- (iv) Any permit granted to the person was of a specified type or was granted for a specified period or until a specified date, or is or was subject to specified conditions,—

shall, in the absence of proof to the contrary, be deemed to be sufficient evidence of the truth of the statement.

21. Revocations, etc.—(1) The Tokelau Islands Departure Regulations 1952* are hereby revoked.

(2) The following Ordinances of the Gilbert and Ellice Island Colony shall cease to have effect as part of the law of Tokelau:

- (i) Sections 11 to 17 and section 21 of, and Schedules A, B, and C to, the Gilbert and Ellice (Consolidation) Ordinance 1917:
- (ii) The Aliens Immigration Restrictions Ordinance 1924.

22. Transitional—(1) The Administrator shall, on each island of Tokelau, not later than 6 weeks after the date on which these regulations come into force, give public notice of the making of these regulations and of the requirements of this regulation.

(2) Any person who—

- (i) Is in Tokelau at the time of the giving of the public notice under this regulation in the relevant island; and

(ii) Is required by these regulations to hold a current permit,—
shall, unless sooner leaving Tokelau for an overseas destination, or unless the person is already the holder of a current permit, apply for a permit under these regulations not later than 14 days after the day on which the public notice was given.

(3) A person who is in an island of Tokelau at the time the public notice is given in the relevant island under this regulation shall not be treated as being in Tokelau unlawfully by reason of failure to hold a current permit until—

- (i) In the case of a person who fails to apply for a permit under subclause (2) of this regulation, the expiry of a period of 15 days after the giving of the public notice:
 - (ii) In the case of a person who has applied for a permit under that subclause, the expiry of a period of 6 weeks after the giving of the public notice, or until a permit has been refused that person, whichever occurs first.
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SCHEDULE

FORMS

Form 1

Reg 8

APPLICATION FOR A PERMIT TO VISIT, RESIDE, OR WORK IN TOKELAU

Full name of Applicant Age

Address Sex

Occupation Citizenship Marital status

Passport No. Place and date of issue

Tick the appropriate boxes and answer where applicable:

I have never been refused a Tokelau permit or been subject to a Tokelau removal order.

I have been refused a Tokelau permit or have been subject to a Tokelau removal order.

If you have been refused a permit, or been subject to a removal order, give details.

.....

I have not arranged accommodation in Tokelau.

I have arranged accommodation in Tokelau.

If you have arranged accommodation, on what island and with whom have you the arrangement? If not, do you request it, and for which island?

.....

I need the following medical or other treatment facilities on Tokelau:

.....

Make the following declarations by ticking the appropriate boxes:

1. I have not been convicted of an offence and sentenced to more than 11 months imprisonment in any country. True False

2. I do not have an infectious or contagious medical condition. True False

3. I will have sufficient means of support in Tokelau. True False

4. I have appropriate onward passage. True False

If you ticked "False" for any of the above give details of the matter.

.....

Conditions of your permit:

[Tick the appropriate boxes]

5. I undertake to respect the customs of Tokelau.

SCHEDULE—continued

FORMS—continued

Form 1—continued

6. I agree that if I am unlawfully in Tokelau, I will leave Tokelau by the first available vessel at my own cost.

Additional conditions may be imposed.

Note: If you fail to honour or comply with a condition of your permit, your permit may be revoked if you are given notice to that effect by the relevant village.

Fill in the details for the appropriate permit(s)

VISITORS PERMIT

Place(s) of visit to Tokelau
Purpose(s) of visit
Proposed time of visit: From to
State the time and reason for any previous visits to Tokelau.
.....

The following persons are accompanying me to Tokelau [Note: a separate application should be made for each person]
.....

State your proposed means of transport to and from Tokelau. If it does not regularly travel to Tokelau, describe its type and condition (including where possible details of size, age, or other matters affecting the vessel's seaworthiness and self-sufficiency in fuel, water, and provisions).
.....

RESIDENCE PERMIT

Place of proposed residence
Proposed length of residence
Reason for seeking residence
.....

WORK PERMIT

Proposed employer Proposed work place(s)
Proposed type(s) of work
Proposed length of employment
.....

SPECIAL PERMIT

Fill in the details required above for residence and work permits.

State the reason the special permit is sought.
.....
.....

SCHEDULE—continued
FORMS—continued
Form 1—continued

I declare that the information given in this application form is true and correct. I realise that supplying information that is false or misleading in a material respect is an offence.

Applicant's signature Date

OFFICIAL USE ONLY: Official copy of receipt Date received
Amount of money received Passport sighted Yes No
Official signature Position

OFFICIAL USE ONLY: Applicant's copy of receipt Date received
Amount of money received Passport sighted Yes No
Official signature Position

SCHEDULE—continued

FORMS—continued

Form 2

PERMIT TO VISIT, RESIDE, OR WORK IN TOKELAU

[OFFICIAL USE ONLY]

Full name Age
Address Sex
Citizenship Passport Number
Place and date of issue of passport

Names of any accompanying persons:
.....

Accommodation in Tokelau arranged with
.....

The above-named person has been granted:

- a visitors permit []
a residence permit []
a work permit []
a special permit []

VISITORS PERMIT

Purpose of visit Proposed means of transport
The permit is valid from to

OR

This permit is valid for a period of 10 days commencing on

Official signature

RESIDENCE PERMIT

This permit is valid from to

OR

This permit is valid for a period of 3 months commencing on

Official signature

SCHEDULE—continued
FORMS—continued
Form 2—continued

WORK PERMIT

This permit is valid from to

OR

This permit is valid for a period of 3 months commencing on

This permit has been approved by all 3 villages in Tokelau.

Official signature

SPECIAL PERMIT

This permit is valid from to

OR

This permit is valid for a period of 1 year commencing on

The reason for the special permit is

Official signature

Special conditions of any permit granted:

.....

Official signature Date

Inspected by—

Signature	Position	Date
.....
.....
.....
.....

SCHEDULE—*continued*FORMS—*continued*

Form 3

REMOVAL ORDER

Reg. 15

Issued under regulation 15 of the Tokelau Immigration Regulations 1991

This order is issued in respect of, a citizen of
, who is in Tokelau unlawfully.

[Name of country, if known]

This order authorises any constable, or an Administration Officer or person authorised by an Administration Officer, to use such reasonable force as may be necessary to ensure that the person named above is placed on board any vessel on which it is practicable for the person to leave Tokelau. If necessary the person may be detained for up to 24 hours to ensure that he or she boards the vessel.

Official Signature

Designation

Date

MARIE SHROFF,
 Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 August 1991, set out the rules under which persons may visit, reside, and work in Tokelau. None of these rules apply to New Zealand citizens who are Tokelauans.

The main features of the regulations are as follows:

- (i) New Zealand citizens who are not Tokelauans do not require a permit to enter Tokelau, but may not stay in Tokelau for more than 10 days or work in Tokelau unless they hold the appropriate permit (*regulation 4*).

Persons who are not New Zealand citizens require an appropriate permit to visit, reside, or work in Tokelau at any time (*regulation 5*).

- (ii) *Regulation 7* sets out the 4 different kinds of permits.

Visitors permits allow the permit holder to be in Tokelau for up to 10 days.

Residence permits allow the permit holder to reside in Tokelau for up to 3 months.

Work permits allow the permit holder to work in Tokelau for up to 3 months.

Special permits allow the permit holder to reside and work in Tokelau for up to 1 year, unless otherwise specified.

- (iii) Under *regulation 9 (1)*, the decision whether or not to grant a permit is in the discretion of the Administrator, but *subclause (2)* sets out a list of matters that the Administrator should be satisfied of before granting a visitors, residence, or work permit.

In addition, the Administrator may not grant a work permit without the approval of all 3 villages (*subclause (3)*).

An Administration Officer or constable will generally be required to grant visitors permits to persons passing through Tokelau in transit to another country, crew

- members of vessels legitimately visiting Tokelau, and persons who are shipwrecked or are in Tokelau by similar force of circumstance (*subclause (4)*).
- (iv) *Regulation 12* allows the Administrator to revoke a permit if the Administrator considers that there is good reason to do so in the interests of Tokelau. *Subclause (4)* sets out a list of matters that constitute good reason for revoking a permit, without in any way restricting other circumstances in which good reason may be found to revoke a permit.
 - (v) *Regulation 15* provides for the issue of removal orders for persons unlawfully in Tokelau.
 - (vi) *Regulation 17* provides that the Administrator may delegate any of the powers conferred by the regulations, except that the power to revoke a permit or issue a removal order cannot be delegated to anyone other than the Official Secretary or an Administration Officer.
 - (vii) *Regulation 21* makes special provision for persons who are in Tokelau at the time the regulations come into force, allowing a 6-week period for the Administrator to give public notice of the requirements that affected persons are to meet, and a further 2-week period for affected persons to apply for a permit.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 4 July 1991.

These regulations are administered in the Ministry of External Relations and Trade.