

# **The Treasury**

## **Overseas Investment Amendment Bill**

### **Commitment to Reside in New Zealand Information Release**

**October 2020**

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## Overseas Investment Amendment Bill: Commitment to Reside in New Zealand Requirements

### Talking points for Cabinet on 23 January 2018

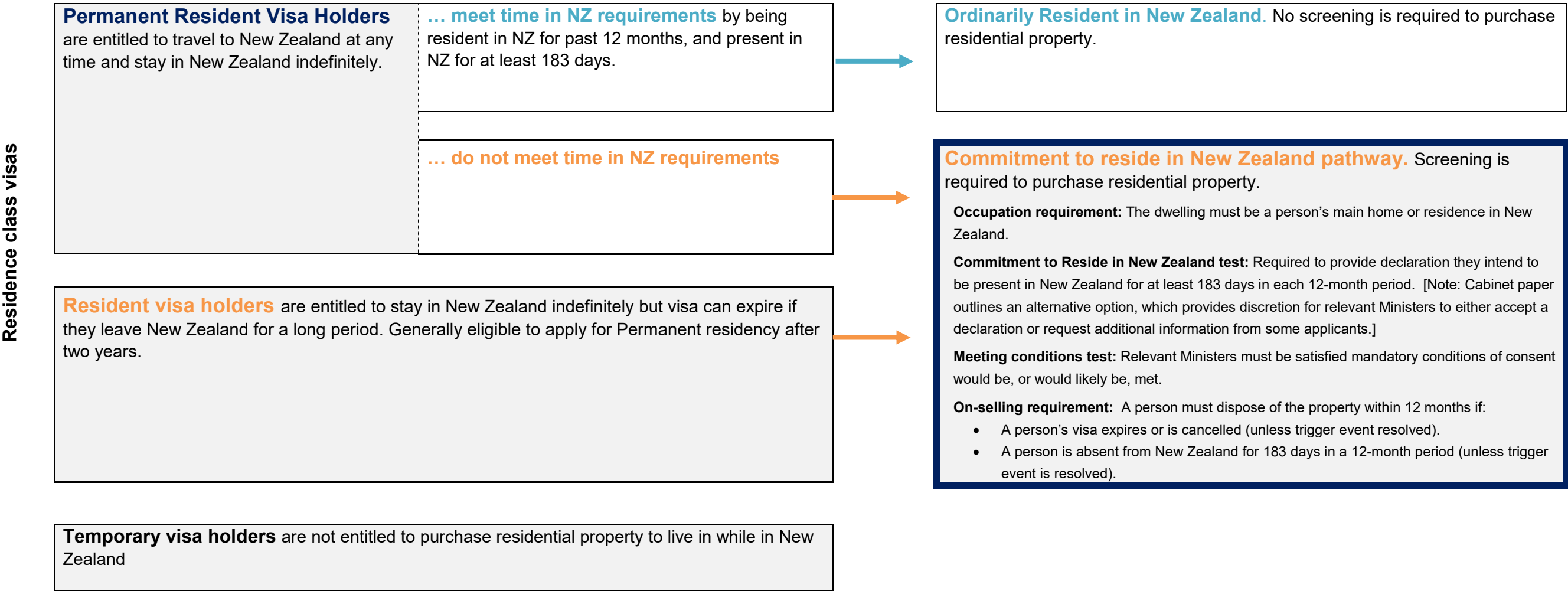
- This Cabinet paper seeks agreement to the requirements that residence class visa holders must meet to purchase residential land. Unless the regulations come into force alongside the Bill, residence class visa holders who are committed to residing in New Zealand will be unable to purchase their own home.
- The Bill establishes the core elements for the *Commitment to Reside in New Zealand* pathway. The proposals in this paper relate to the detailed settings.
- [Attached to these talking points are two alternative options for an A3 summarising pathways for different visa types and proposed requirements.]
- The *Commitment to Reside in New Zealand* pathway applies to (i) resident visa holders, and (ii) permanent resident visa holders if they have not been in New Zealand for the required duration to be deemed ordinarily resident in New Zealand. On 13 December, Cabinet Business Committee endorsed the decision of Ministers with power to act, that temporary visa holders would not be eligible for this pathway.
- The core proposals are:
  - All residence class visa holders would be eligible for the pathway.
  - Applicants would be required to provide a declaration they intend to be present in New Zealand for at least 183 days in each 12-month period
  - A person creates a trigger event if they have a change of visa status or are absent from New Zealand. If a trigger event is not resolved, they would be required to dispose of the property within 12 months.
- Determining commitment to reside in New Zealand by a person submitting a declaration is designed to balance effectiveness and administrative costs. A declaration is considered to be adequate because:
  - Any applicants will have already demonstrated a form of commitment to New Zealand to obtain a residence class visa.
  - The requirement for a person to dispose of property if they are largely absent from New Zealand is expected to deter investors without a legitimate intention to reside in New Zealand.
- If a more-intensive test is desired, the Cabinet paper outlines an alternative option.
- I intend for officials to share an outline of proposed regulations, or a draft of regulations if they are complete, with the Finance and Expenditure Committee. The select committee are considering the Bill and scheduled to report back to the House on 20 February 2018.

**Proposed additional recommendation**

- To table at Cabinet meeting on 23 January if appropriate for Cabinet minute to record intentions to share proposed content of regulations with Finance and Expenditure Select Committee

**agree** officials will provide the Finance and Expenditure Select Committee with an outline of proposed Commitment to Reside in New Zealand Regulations to support the committee with its consideration of the Overseas Investment Amendment Bill

Commitment to Reside in New Zealand – pathways for consent to purchase a main home or residence



Commitment to Reside in New Zealand – pathways for consent to purchase a main home or residence

Under the Overseas Investment Bill (Bill), a person who is ‘ordinarily resident in New Zealand’ or a New Zealand citizen is not captured by any requirements to obtain OIO consent.

The Bill introduces requirements for any overseas person to obtain OIO consent to purchase residential land. There are three pathways for obtaining consent:

- the *Commitment to Reside in New Zealand* test (explained in the below table);
- the new builds test; or
- the benefits test (for non-residential use).

The below table outlines pathways for consent to purchase a main home or residence in New Zealand.

Visa class	Visa Category	Visa Type	Pathways
Residence class visas	<b>Permanent resident visas (PRVs)</b> <i>s70(a)(i) of the Immigration Act</i>  PRVss have a right to reside in NZ indefinitely, no conditions attached to their visas and visas cannot expire.  PRVs are almost always granted to someone who already holds a resident visa and has demonstrated a commitment to NZ i.e. spent enough time here.  Around 38,000 PRVs were granted in 2016/17.		<b>Ordinarily resident in New Zealand – can purchase residential land without consent</b> Permanent resident visa holders that have been residing in New Zealand for the immediately preceding 12 months, and have been present in New Zealand for 183 days or more in the immediately preceding 12 months.  <b>Commitment to Reside in New Zealand Pathway – cannot purchase residential land unless they obtain consent through the following requirements:</b> <ul style="list-style-type: none"><li>• <b>Eligible visa types:</b> All residence class visa holders eligible for the pathway. This includes <u>permanent resident visa holders</u> who are not ordinarily resident in New Zealand and <u>resident visa holders</u>.</li><li>• <b>Occupation requirement:</b> The dwelling must be a person’s main home or residence in New Zealand.</li></ul>
	<b>Resident visas (RVs)</b> <i>s70(a)(ii) of the Immigration Act</i>  RVs have a right to reside in NZ indefinitely but can expire if they leave NZ for a long period; eligible to obtain PRV after two years if meet certain conditions (usually, minimum time in NZ)  Around 47,000 RVs were granted in 2016/17	<ul style="list-style-type: none"><li>• Skilled Migrant Categories</li><li>• Residence to Work</li><li>• Investors</li><li>• Entrepreneurs</li><li>• Partnership</li><li>• Parent</li><li>• Dependent Child</li><li>• Samoan Quota</li><li>• Pacific Access</li><li>• Refugees</li><li>• Other</li></ul>	<ul style="list-style-type: none"><li>• <b>Commitment to Reside in New Zealand test:</b> Required to provide declaration they intend to be present in New Zealand for at least 183 days in each 12-month period. [Note: Cabinet paper outlines alternative option for this element, which provides discretion to either accept a declaration or request additional information from some applicants.]</li><li>• <b>Meeting conditions test:</b> Relevant Ministers must be satisfied mandatory conditions of consent would be, or would likely be, met.</li><li>• <b>On-selling requirement:</b> A person must dispose of the property within 12 months if:<ul style="list-style-type: none"><li>○ A person’s visa expires or is cancelled (unless trigger event resolved).</li><li>○ A person is absent from New Zealand for 183 days in a 12-month period (unless trigger event is resolved).</li></ul></li></ul> <b>Alternatively, could purchase residential land if they obtain consent through:</b> <ul style="list-style-type: none"><li>✓ <u>new builds test</u> or</li><li>✓ <u>benefits test</u> (for non-residential use)</li></ul>
Temporary entry class visas	<b>Temporary visas</b> <i>s70(b)(i) of the Immigration Act</i>	<ul style="list-style-type: none"><li>• Essential Skills</li><li>• Work to Residence</li><li>• Recognised Seasonal Employer</li><li>• Post Study Work</li><li>• Working Holiday Schemes</li><li>• Specific Purpose or Event</li><li>• Partner of a NZ Citizen or Resident</li><li>• Partner of a Worker or Student</li><li>• Dependant students</li><li>• International Students</li><li>• Other students</li><li>• Visitor</li><li>• Other temporary visas</li></ul>	<b>Cannot purchase residential land unless they obtain consent through:</b> <ul style="list-style-type: none"><li>✓ <u>new builds test</u> or</li><li>✓ <u>benefits test</u> (for non-residential use)</li></ul>