

## Verification of ordinary residence for grant of citizenship

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### Introduction

This policy outlines the relevant legislation and policy relating to the ordinary residence requirement of the Citizenship Act 1977. The ordinary residence requirement is a transitional provision covered in the Citizenship Amendment Act 2005 and only exists until 20th April 2010.

**Note:**

Applicable to 3 year grants only.

The three year ordinary residence requirement must be met if an applicant:

- was entitled to reside in New Zealand indefinitely before 21 April 2005, or
- became entitled to reside in New Zealand indefinitely after 21 April 2005 as a result of a residence application made before that date.

The ordinary residence period is the three year period immediately preceding the date of application (fee paid date).

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# Legislation

## **Citizenship Act 1977 former section 8(2)(a)**

The former Section 8(2)(a) of the Citizenship Act 1977 requires the applicant to be:  
'... throughout the period of three years immediately preceding the date of his application, ordinarily resident in New Zealand'.

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## **Definition of Ordinarily Resident**

The Act does not contain a positive definition of 'ordinarily resident'. A person is, generally, defined as being ordinarily resident 'where they have established their permanent base and where they usually live'.  
Section 17(2)(d) of the Citizenship Amendment Act 2005 states that for the purposes of the former section 8(2)(a) and (4), the time during which a person is ordinarily resident in New Zealand includes:

- 'time spent in New Zealand while holding a valid immigration permit, or being exempt from the requirement to hold a permit, but
- does not include any time during which the person was unlawfully in New Zealand'.
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## Verification of ordinary residence for grant of citizenship, Continued

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### **Definition of New Zealand**

The Citizenship Act 1977 defines New Zealand as, also including the following:

- The Cook Islands
  - Niue
  - Tokelau
  - The Ross Dependency.
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### **Requirement to meet three years ordinary residence**

An applicant who is being considered under the transitional provisions of the Citizenship Amendment Act 2005 must satisfy the Minister that they can meet:

- the three year ordinary residence requirement, or
  - satisfy the requirements for a reduction of the ordinary residence period to a minimum of 12 months outlined in section 8(4) of the Act.
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### **Applicants not yet 16 years of age applying under 9(1)(a)**

An applicant applying under section 9(1)(a) whose parent(s) are, or are about to become, New Zealand citizens is not required to meet the ordinary residence requirement.

An applicant applying under section 9(1)(a) whose parent(s) are not, or are not about to become, New Zealand citizens is required to meet the ordinary residence requirement.

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## Lawful Residence

**The  
Immigration  
Act 1987**

An applicant is considered to have been lawfully resident in New Zealand for citizenship purposes if they are lawfully resident in terms of section 4 of the Immigration Act 1987. Immigration New Zealand (INZ) has stated that it is the responsibility of immigrants to maintain valid immigration permits.

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**14 days or less  
without a  
permit**

If there have been no gaps of more than 14 days in the applicant's permits during their ordinary residence period, applicants are considered to have been lawfully resident in New Zealand for citizenship purposes. That is, if each period without a permit is less than 14 days, the applicant is considered to have been ordinarily resident in New Zealand.

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**More than 14  
days without a  
permit**

Applicants are considered to have been unlawfully resident in New Zealand for citizenship purposes, if the applicant: has gaps in their permits of more than 14 days (during their ordinary residence period), and is not exempt from holding a permit. Each period of more than 14 days without a permit is considered to be an unlawful period in New Zealand, and therefore, the applicant is not considered to have been ordinarily resident. A person who has had a period of unlawful residence of more than 14 days must complete the specified period of ordinary residence from the time their immigration status was regularised. INZ should confirm in writing any period of unlawful residence.

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## Verification of ordinary residence for grant of citizenship, Continued

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### Overseas without a permit

If an applicant is without a permit for more than 14 days, but is out of New Zealand for that period, this does not constitute a period of unlawful residence in New Zealand.

A decision on whether an applicant is considered to have been ordinarily resident during their absence will depend on whether the applicant maintained their permanent base and usually lived in New Zealand during their absence.

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### Temporary permits

There are four types of temporary permit in the Immigration Act 1987:

- limited purposes permit
  - visitors permit
  - work permit
  - student permit.
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### Additional permits

An applicant who holds a temporary permit may apply for, and be issued with, a new permit by INZ under section 30 of the Immigration Act 1987.

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### Backdating temporary permits

If INZ issue a new temporary permit, it may only be backdated to the expiry date of the previous temporary permit, if the application for a new temporary permit was lodged prior to the expiry date (of the old permit).

Therefore, if the application for a new temporary permit is lodged after the expiry date of the previous permit, the new permit's date of issue cannot be backdated, regardless of whether INZ were holding the application documents. If this is the case refer the application back to INZ to have the applicant's immigration record verified.

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### Residence permits

A residence permit takes effect from the date the permit is issued. A residence permit cannot be backdated.

If an applicant applies for a residence permit, they must continue to renew their temporary permits until the date a residence permit is granted.

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## Verification of ordinary residence for grant of citizenship, Continued

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### Refugee

If an applicant for citizenship has also applied for refugee status, and the applicant does not have a valid permit to reside in New Zealand, the usual INZ procedure is to not seek to deport the applicant until the application for refugee status has been determined.

This practice fulfils New Zealand's international obligations but does not legalise the applicant's residence in New Zealand.

For citizenship purposes the applicant is considered to be unlawfully resident in New Zealand until their immigration status is regularised.

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## Ordinary residence for schedule purposes

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**Assessment of ordinary residence for schedule purposes** The applicant must show that they are clearly able to meet the ordinary residence requirement to be included on a schedule. There are four parts to clearly meeting the ordinary residence requirement.

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**Physical presence in New Zealand** To be considered to clearly meet this part of the ordinary residence requirement an applicant must:  
have arrived in New Zealand at least three years before their application  
be present in New Zealand for eight of the last twelve weeks of their ordinary residence period  
be present in New Zealand for at least two years of their ordinary residence period  
not have a single absence over six months during their ordinary residence period.

Applicants who have lived in New Zealand for fewer than four years must also have been present in New Zealand on the first day of the ordinary residence period, or was living in New Zealand for the majority of the preceding month, and for at least eight of the first twelve weeks of their ordinary residence period.

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**Permanent base in New Zealand** An applicant is considered to clearly meet this part of the ordinary residence requirement when they have maintained a home in New Zealand throughout the ordinary residence period and New Zealand was their normal place of abode.

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**Settled lifestyle overseas** To be considered to clearly meet this part of the ordinary residence requirement, an applicant must not have entered into a settled lifestyle overseas for more than four months during their ordinary residence period.

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**Lawful residence** To be considered to clearly meet this part of the ordinary residence requirement, an applicant must be lawfully in New Zealand during their ordinary residence period. See the above section Lawful residence for further information.

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## Ordinary residence for submission

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**Submissions** If an applicant is not able to clearly meet the ordinary residence requirement for inclusion on a schedule, a more detailed assessment of the applicant's circumstances must be undertaken, to determine if the applicant has been ordinarily resident in New Zealand.

It is important to consider all the information provided by an applicant when considering whether the applicant has been ordinarily resident in New Zealand.

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**Submission criteria** An applicant may have had absences from New Zealand greater than the schedule guidelines allow, however, this does not mean that an applicant does not meet the ordinary residence requirement. Rather, the file must be referred to the Minister as a submission. Citizenship must produce a submission which identifies all of the issues relevant to the application, if:

- those issues have been fully and fairly investigated, and
- the results of the investigation are set out within the submission, and lead logically to a recommendation.

The decision on whether to recommend that the Minister approves or declines the application must be made on a case-by-case basis, after assessing the overall situation.

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## Reduction of ordinary residence

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### **Reduction to a minimum of 12 months**

If an applicant, who is being considered under transitional provisions section 8(1) of the Citizenship Act 1977, is assessed as being unable to clearly fulfil the ordinary residence requirement, the Minister may reduce the ordinary residence period to a minimum of 12 months.

Former section 8(4) states that the Minister may reduce the requirement if:

'... because of the applicant's age or for any other reason personal to the applicant, the applicant would suffer undue hardship if he were required to be ordinarily resident in New Zealand for the whole of the period of 3 years'.

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### **Undue hardship**

It is not possible to predetermine what constitutes 'undue hardship'. An assessment must be made on a case-by-case basis, having regard to the applicant's particular circumstances.

In order for the Minister to exercise discretion under former section 8(4), it is necessary to determine that the:

applicant will suffer hardship  
hardship is undue

undue hardship claimed relates personally to the applicant  
undue hardship is caused by the requirement that the applicant reside in New Zealand for three years.

The undue hardship requirement is, by its very nature, a difficult requirement for an applicant to fulfil.

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### **Ordinarily resident 12 months prior to application**

The Minister may only exercise the discretion under former section 8(4) if the Minister is satisfied that the applicant would suffer undue hardship by having to fulfil the whole of the three year ordinary residence requirement.

If the Minister reduces the ordinary residence period to, for example 12 months, the applicant must have been ordinarily resident in New Zealand throughout the 12 months immediately preceding the date of their application.

The Minister is unable to consider the section 8(1) ordinary residence requirement to have been fulfilled if the applicant is unable to satisfy the Minister that they have been ordinarily resident throughout the 12 month period immediately preceding the date of application.

In such cases the Minister would be unable to approve the grant of citizenship under section 8(1).

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## Crown service overseas

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**Section 8(5)  
(Crown service  
for New  
Zealand)**

Under section 8(5), when considering whether an applicant meets the ordinary residence requirement, the Minister may treat the applicant as having been in New Zealand for any period within the three years immediately before application if:  
the applicant was in Crown service under the New Zealand Government, or  
the applicant was outside New Zealand because the applicant was accompanying his or her spouse or de facto partner who was a New Zealand citizen in Crown service under the New Zealand Government.

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**Section 8(5)(a)**

For consideration under section 8(5)(a), the applicant is required to provide a letter from the relevant government department confirming that he or she was on Crown service for the relevant period.

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**Section 8(5)(b)**

In cases where the applicant had accompanied a spouse or partner on Crown service, the applicant can obtain a letter of confirmation from the relevant government department. In cases where the applicant had accompanied a de facto partner on Crown service, the relevant government department will need to issue a letter stating that the applicant was a recognised partner of the person on Crown service and did accompany the person on the posting outside New Zealand.

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**Section 8(6)**

Under section 8(6), when considering whether an applicant meets the ordinary residence requirement, the Minister may treat the applicant as having been present in the Cook Islands, Niue or Tokelau for any period within the three years immediately preceding application, during which-  
the applicant served in the public service of the Government of the Cook Islands, Niue or Tokelau; or  
the applicant was outside New Zealand because the applicant was accompanying his or her spouse or de facto partner who was a New Zealand citizen serving in the public service of the Cook Islands, Niue, or Tokelau.  
For consideration under this section, the applicant is required to provide a letter of confirmation from the authorities in the Cook Islands, Niue or Tokelau.

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## Verification of ordinary residence for grant of citizenship, Continued

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### **Policy**

Citizenship normally considers an applicant to be ordinarily resident in New Zealand throughout the period of their Crown service overseas.

An applicant who has been ordinarily resident in New Zealand prior to commencing Crown service overseas would normally be considered to have been ordinarily resident in New Zealand during the period of their Crown service.

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### **Proof of marriage, civil union or de facto relationship**

An applicant being considered under section 8(5) must supply proof in the form of a marriage certificate, civil union certificate or other official document that she/he is the partner of a New Zealand citizen.

In cases where the applicant had accompanied a de facto partner on Crown service, the relevant government department will need to issue a letter stating that the applicant was a recognised partner of the person on Crown service and did accompany the person on the posting outside New Zealand.

For example, the Ministry of Foreign Affairs and Trade has a policy under which staff members in de facto (including same sex) relationships may apply to the Ministry for official recognition of their partner. Formal recognition is required in order for staff to claim post benefits and allowances based on being in a partnership. The letter from the Ministry will specify the date that the relationship was formally recognised. The application must be referred to the Minister of Internal Affairs as a submission.

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### **Applicants who have been married or entered into civil union more than once**

Under section 8(9)(b), an applicant is required to be a partner of a New Zealand citizen.

An applicant who has been married or in a civil union more than once must provide evidence to show they have legally dissolved their relationship with their previous partner(s) in order to establish that their current relationship to a New Zealand citizen is lawful. In certain circumstances it may also be necessary to obtain the New Zealand partner's dissolution record.

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## Verification of ordinary residence for grant of citizenship, Continued

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**Submission** All applications for which a period of Crown service/public service may be considered as a period of ordinary residence, must be referred to the Minister as a submission.

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**Foreign diplomats** Foreign diplomats do not have permanent base in New Zealand. A person that holds diplomatic or similar status, who is covered by any of the terms of the Diplomatic Privileges and Immunity Act 1968 or the Consular Privileges and Immunity Act 1971, is not considered to have established or maintained their permanent base in New Zealand. Such a person is not considered to be ordinarily resident in New Zealand.

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**Legislation** [Citizenship Act 1977](#)  
[Immigration Act 1987](#)  
[Diplomatic Privileges and Immunity Act 1968](#)  
[Consular Privileges and Immunity Act 1971](#)

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