

Reprint
as at 5 December 2017



Education (Tertiary Education—Criteria Permanent Residents Studying Overseas must Satisfy to be Domestic Students) Regulations 2016
(LI 2016/212)

Hon Sir William Young, Administrator of the Government

Order in Council

At Wellington this 26th day of September 2016

Present:

His Excellency the Administrator of the Government in Council

These regulations are made under section 159(4) of the Education Act 1989 on the advice and with the consent of the Executive Council.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Education.

Schedule 1
Transitional, savings, and related provisions

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Regulations

1 Title

These regulations are the Education (Tertiary Education—Criteria Permanent Residents Studying Overseas must Satisfy to be Domestic Students) Regulations 2016.

2 Commencement

These regulations come into force on 1 January 2017.

Regulations: confirmed, on 5 December 2017, by section 9 of the Subordinate Legislation Confirmation Act 2017 (2017 No 47).

3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

Act means the Education Act 1989

ordinarily resident in New Zealand, for a person at any time, means that the person at that time (even if not currently present in New Zealand)—

- (a) has the person's usual place of residence in New Zealand; and
- (b) intends to reside indefinitely in New Zealand

organisation has the same meaning as in section 159B of the Act

permanent resident means a holder of a residence class visa granted under the Immigration Act 2009

studying overseas, for a person who is a permanent resident, means undertaking a course of study or training that will be or is done—

- (a) by the person outside New Zealand; and
 - (b) while the person is enrolled as a student (but not as an extramural student) at an organisation; and
 - (c) as part (but not all) of a programme or training scheme provided by the organisation.
- (2) Terms used, but not defined, in these regulations, and defined in section 159(1) of the Act, have the meanings in that section.

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

- 5 Criteria permanent residents studying overseas must satisfy to be domestic students**
- (1) Subclause (2) sets out the criteria that a person who is a permanent resident and who will be or is studying overseas must satisfy under paragraph (b) of the definition of domestic student in section 159(1) of the Act.
- (2) The criteria are—
- (a) that the person is, at both of the following times, ordinarily resident in New Zealand:
- (i) immediately before the person begins studying overseas; and
- (ii) while the person will be or is studying overseas; and
- (b) that the study that the person is or will be doing is or will be in a country with which the person is not familiar.
- (3) For the purposes of subclause (2)(b), a person is **not familiar** with a country if the person—
- (a) has not previously been to that country; or
- (b) has, in the 5 years before the date on which the overseas study begins, spent a total of less than 6 months in that country.

Schedule 1
Transitional, savings, and related provisions

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Part 1
Provisions relating to these regulations as made

- 1 Criteria apply only to enrolments effective on or after 1 January 2017**
- (1) The criteria apply to an enrolment only to the extent that the enrolment has effect on or after 1 January 2017.
- (2) Subclause (1) applies even if the enrolment was applied for, or permitted, or both, before 1 January 2017.

Michael Webster,
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 January 2017, are made under the Education Act 1989 (the **Act**). They prescribe criteria that a permanent resident studying overseas must fulfil to be a domestic student (as that term is defined, for tertiary education, in section 159(1) of the Act). Domestic student status affects—

- eligibility, and fees, for enrolment as a student at a New Zealand tertiary education organisation in a programme or training scheme provided by the organisation;
- eligibility for tuition subsidies (through the determination of the design of funding mechanisms, which apply to all forms of tertiary education organisations).

The criteria apply to an enrolment only to the extent that the enrolment has effect on or after 1 January 2017 (even if it was applied for, or permitted, or both, before 1 January 2017). A permanent resident not studying overseas is unaffected by the criteria prescribed by these regulations (and so continues to be a domestic student under paragraph (b) of the definition of that term in section 159(1) of the Act).

These regulations are a confirmable instrument under section 47B of the Legislation Act 2012. They are revoked at the close of 31 December 2017, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(b) of that Act.

Regulatory impact statement

The Ministry of Education produced a regulatory impact statement on 7 September 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <http://www.education.govt.nz/ministry-of-education/regulatory-impact-statements/>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 29 September 2016.

Reprints notes

1 *General*

This is a reprint of the Education (Tertiary Education—Criteria Permanent Residents Studying Overseas must Satisfy to be Domestic Students) Regulations 2016 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Subordinate Legislation Conformation Act 2017 (2017 No 47): section 9