

Overseas Investment Amendment Bill Commitment to Reside in New Zealand

Release Document

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<https://treasury.govt.nz/publications/information-release/residential-land-changes-overseas-investment-amendment-bill>

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- [1] 9(2)(a) – to protect the privacy of natural persons, including deceased people
- [2] 9(2)(k) – to prevent the disclosure of official information for improper gain or improper advantage
- [3] 6(a) – to avoid prejudice to the security or defence of New Zealand or the international relations of the government
- [4] 9(2)(f)(iv) – maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
- [5] 9(2)(h) – to maintain legal professional privilege
- [6] 9(2)(j) – to enable the Crown to negotiate without disadvantage or prejudice

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above.

Coversheet: Commitment to Reside in New Zealand

Advising agencies	<i>The Treasury</i>
Decision sought	<i>This analysis and advice has been prepared for the purpose of informing policy decisions to be taken by Cabinet regarding the regulations for the 'commitment to reside in New Zealand' pathway in the Overseas Investment Amendment Bill.</i>
Proposing Ministers	<i>Hon David Parker (Associate Minister of Finance)</i>

Summary: Problem and Proposed Approach

Problem Definition: What problem or opportunity does this proposal seek to address? Why is Government intervention required?

How to give effect to the Government's inclusion of a pathway in the Overseas Investment Amendment Bill for New Zealand residents that are neither citizens nor permanent residents "ordinarily resident in New Zealand" to purchase a single residential dwelling to use as their main home or residence.

Proposed Approach: How will Government intervention work to bring about the desired change? How is this the best option?

These regulations set out the pathway for New Zealand residents to gain consent to purchase a single residential dwelling to use as their main home or residence. The proposed approach meets the policy effectiveness criteria whilst minimising costs by providing a bright line test tied to their visa category.

Evidence certainty and quality assurance

Agency rating of evidence certainty?

The Treasury is confident that the proposed approach best meets the criteria for policy effectiveness and minimising compliance and administrative costs.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

The Treasury¹

Quality Assurance Assessment:

Not applicable for 100 day plan priorities

Reviewer Comments and Recommendations:

Treasury comments are based on revised expectations for Regulatory Impact Assessments covering 100 day priorities.

The Regulatory Impact Statement clearly sets out the implementation options to give effect to a pathway for New Zealand residents that are neither citizens nor "ordinarily resident in New Zealand" to purchase a single residential dwelling, and the reasoning for the selection of preferred options from among those. Within the constraints set out in the section "Key Limitations or Constraints on Analysis", the analysis of the likely impact of the proposed approach on the New Zealand housing market is more limited, and the range of options considered has been limited to residence class visas only. There is also a lack of consultation with private sector organizations or the general public to inform the development of this policy.

It will be important to continue to focus on effective ways of monitoring the impact of this policy on overall housing market outcomes, including understanding the unintended consequences and the extent and nature of the behavioural responses to this policy.

¹ Regulatory Quality Team

Impact Statement: Commitment to Reside in New Zealand

Section 1: General information

Purpose

The Treasury is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet.

Key Limitations or Constraints on Analysis

The key limitations and constraints applying to this analysis are as follows:

Time constraints: Ministers have directed officials to prepare this policy within the timeframe of possible coming into effect of CPTPP. Accordingly, this analysis has been prepared under tight time constraints. This has meant that there has not been any opportunity to consult with private sector organizations or the general public to inform the development of this policy.

Range of options considered: This analysis is constrained by decisions the Government has already taken to deliver on their post-election commitment to “*ban overseas speculators from buying existing houses*” within the first 100 days. As such, this analysis is limited by the policy decisions and parameters prescribed in the Overseas Investment Amendment Bill 2017 (“the Bill”) introduced in December 2017.

Assumptions underpinning impact analysis: Analysis on the likely impact of these regulations is constrained by a lack of empirical data, including around current levels of ownership in the housing market by residents, and permanent residents not ordinarily resident in New Zealand. Similarly, it is difficult to assess the extent and nature of the behavioural responses that will result from this policy.

Responsible Manager (signature and date):

Thomas Parry
International, Economic System
The Treasury

16 January 2018

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

On 14 December 2017 the Government introduced a Bill to amend the Overseas Investment Act 2005 (the Act). The Bill implements the Government's policy to bring residential land within the category of "sensitive land" for the purposes of the Act.

These changes will mean that overseas persons who are not resident in New Zealand will generally not be able to buy existing houses or other pieces of residential land. The Government's objective with these changes is to make homes more affordable for New Zealand buyers while also supporting its efforts to build a more productive economy by helping redirect capital to more productive uses.

Sensitive land that is residential land will be all properties classified as either "residential" or "lifestyle" for rating valuation purposes under the Rating Valuations Rules, which are issued by the Valuer-General. A property's classification is available from various property-information websites.

A natural person is an overseas person under the Act if they are neither a New Zealand citizen nor "*ordinarily resident in New Zealand*". For residential land, a person will be ordinarily resident here if they hold a permanent resident visa and have been residing in New Zealand for at least a year and have been present in New Zealand for at least 183 days in the past year. The definition of "*ordinarily resident in New Zealand*" remains as it is in the current Act for all other purposes.

Overseas persons will be able to buy sensitive land that is residential land in certain situations. These are:

- if they will be developing the land and adding to New Zealand's housing supply; or
- if they will convert the land to another use (eg, a business) and are able to demonstrate this would have wider benefits to the country; or
- if they have an appropriate visa status and can show they have committed to reside in New Zealand (the criteria for this will be addressed in this analysis).

Conditions will be imposed if an overseas person purchases residential land utilizing one of these exemptions.

2.2 What regulatory system, or systems, are already in place?

As outlined above, the proposed screening regime for overseas investment in residential land is the primary regulatory system to which this analysis relates. There are two existing regulatory systems which relate to this analysis.

Overseas Investment Screening Regime

Foreign investment in New Zealand is regulated by the Act. Overseas people must get consent through the Overseas Investment Office (OIO) before they can invest in New Zealand's sensitive land, significant business assets and fishing quota. Proposed investment must meet criteria as set out in the Act related to the relevant type of investment. The OIO assesses applications to make sure they meet the criteria and consent is granted if all of the criteria are met. Consent is granted subject to conditions that are monitored to ensure compliance.

Residence class visas in New Zealand

There are three classes of visas that may be granted under the Immigration Act 2009, these are residence class visas; temporary entry class visas, and transit visas.

Residence class visas include two broad types of visas; permanent resident visas and resident visas which both allow visa holders to live in New Zealand indefinitely (though resident visa holders are subject to certain conditions, most commonly regarding travel). Holding a residence class visas comes with a number of rights and opportunities in New Zealand including free education in state schools, subsidised tertiary education, access to government funded healthcare and welfare benefits, the right to vote, and being eligible to serve on a jury.

There are some general requirements for getting a resident visa as well as specific criteria relating to the particular visa category. General requirements include demonstrating you are of "good character" and meet specific health requirements. Applicants may already live in New Zealand on a temporary visa (such as a work visa), or live outside New Zealand and want to move to New Zealand to live here indefinitely. Approximately three quarters of resident visas are approved for people that already live in New Zealand (MBIE).

Overview of New Zealand Residence Programme – Residence Visas

The New Zealand Residence Programme (NZRP) contains residence goals set by Government to meet New Zealand’s ongoing skill needs and enhance human capability, maximise social cohesion and family connections, and meet our humanitarian commitments. The current Residence Programme planning range is 85,000 to 95,000 people between 1 July 2016 and 30 June 2018. The number of places available to migrants under the NZRP is reviewed by Cabinet periodically. The NZRP includes three broad streams each with different categories to be granted resident visas. These are outlined in the following table.

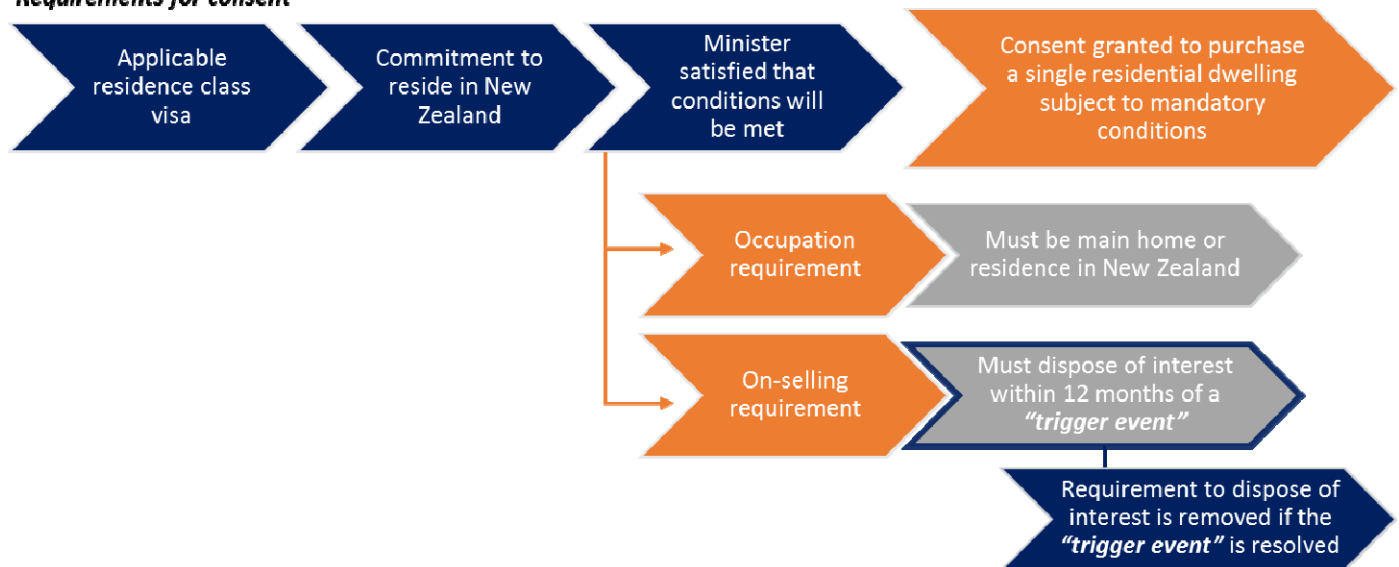
<p>Skilled/Business Stream</p> <p><i>The purpose of the Skilled/Business stream is to help skilled and entrepreneurial migrants gain residence in New Zealand.</i></p> <p>approximately 50,500 to 57,500 places</p>	<p>Skilled Migrant Category A points based system, with points awarded for age, qualifications, work experience and skilled employment or offer of employment in New Zealand.</p> <p>Business Categories Includes Investors and Entrepreneurs</p> <p>Residence from Work categories For people who have held a work to residence temporary visa for two years under Talent (Arts, Culture and Sports), Talent (Accredited Employer), Long Term Skill Shortage List, or South Island Contribution</p>
<p>Family Sponsored Stream</p> <p><i>The purpose of the Family Sponsored stream is to help reunite families in New Zealand by granting residence to the family members of New Zealand citizens and residents.</i></p> <p>approximately 27,000 to 29,000 places</p>	<p>Family Category Partnership, Dependent Child, Parent and Parent Retirement residence categories</p>
<p>International/Humanitarian Stream</p> <p><i>The purpose of the International/Humanitarian stream is to fulfil New Zealand’s obligations as a good international citizen. Included in this stream are United Nations mandated refugees who are approved under the annual Refugee Quota and asylum seekers who claim refugee status in New Zealand.</i></p> <p>approximately 7,500 to 8,500 places</p>	<p>Samoan Quota Scheme Applicants who are citizens of Samoa can be granted residence through the ballot provided they have a job in New Zealand</p> <p>Refugees Includes Refugee Quota, Refugee Family Support Category, and successful asylum claimants</p> <p>Pacific Access Category Applicants who are citizens of target countries can be granted residence through the ballot provided they have a job in New Zealand</p> <p>Other Includes victims of domestic violence, victims of people trafficking, and various other special policies for specific countries.</p>

2.3 What is the policy problem or opportunity?

As outlined above, the Government has introduced a Bill to amend the Overseas Investment Act. The Bill provides for a pathway to allow overseas persons (i.e. those not “*ordinarily resident in New Zealand*”) to buy sensitive land that is residential in certain circumstances if they hold an appropriate visa and have a commitment to reside in New Zealand. The details of this pathway are to be dealt with via regulation. Unless the regulations are passed to come into effect alongside the primary legislation, certain people will be locked out unintentionally from the residential property market. Therefore these regulations are necessary to give effect to the overall policy intent.

The policy problem this analysis addresses is how to give effect to the Government’s inclusion of a pathway for New Zealand residents that are neither citizens nor permanent residents “*ordinarily resident in New Zealand*” to purchase a single residential dwelling to use as their main home or residence. The Bill prescribes a framework for the operation of this pathway. This is outlined in the following diagram and discussed below.

Requirements for consent



Requirements for consent: A person can obtain consent to purchase sensitive land that is residential if they (including relevant individuals with control²) fit with categories set out in the Bill and Regulations. These categories include “qualifying individuals”, which are people that hold an applicable residence class visa and demonstrate a commitment to reside in New Zealand, as set out in the Regulations. The relevant Ministers would need to be satisfied that, if consent were granted, the mandatory conditions would be, or would likely be, met. Each “*qualifying individual*” must comply with the conditions.

Mandatory conditions to consent: The Bill provides that consent be granted subject to two mandatory conditions. Firstly, the purpose must be to acquire a single residential dwelling that will be the main home or residence in New Zealand. Secondly, the consent holder must dispose of the dwelling within 12 months of a “*trigger event*” occurring in relation to at least one “*qualifying individual*,” unless, by the required date of disposal, the trigger event is resolved.

² If the applicant is a company or a trust, each “relevant individual with control” must satisfy the criteria. They will not be a “relevant individual with control” if they have no beneficial interest in or beneficial entitlement to the interest in the residential land; and a satisfactory reason to not occupy the residential dwelling as their main residence in New Zealand – for example, a lawyer trustee of family trust that owns a home.

On-selling Requirement – Trigger events associated with requirements for consent: The Bill provides for the detail of “*trigger events*” to be determined through regulation. This analysis explores two types of trigger events that are associated with each element of the requirements for consent. The process for resolution of a trigger event is provided for in the Bill, however we are recommending a change to this empowering provision to allow the resolution of trigger events to be determined through regulation.

2.4 Are there any constraints on the scope for decision making?

This analysis is focused exclusively on giving effect to the commitment to reside in New Zealand pathway for screening overseas investment in sensitive residential land. Broader considerations have been made as part of the wider policy process in the preparation of the Bill to amend the Overseas Investment Act.³

2.5 What do stakeholders think?

The following agencies were consulted: Land Information New Zealand; Ministry of Business, Innovation and Employment; Ministry of Justice; Ministry of Foreign Affairs and Trade. The Department of the Prime Minister and Cabinet (Policy Advisory Group) was informed.

As a result of consultation with MBIE, we have added an additional option for the test for commitment to reside in New Zealand [*Option B4*].

³ <http://www.treasury.govt.nz/publications/informationreleases/overseasinvestment/residential-land>

Section 3: Options identification

The following section examines the two sets of issues with respect to meeting the policy objectives.

Requirements for consent.

The first set of issues address the circumstances under which an overseas person will have satisfied the requirements for consent to purchase sensitive land that is residential.

- A. Applicable residence class visas
- B. Test to determine commitment to reside in New Zealand



On-selling requirement: Trigger events & resolution.

The second set of issues address the circumstances under which the requirement to on-sell is triggered, as well as setting out the circumstances which the requirement to on-sell can be lifted.

- C. Change in visa status
- D. Absence from New Zealand



We identify and discuss options to address each issue, and then evaluate these options against the following criteria:

Criteria

- **Policy effectiveness:** The policy provides an effective mechanism for residence class visa holders with a commitment to reside in New Zealand to purchase a residential dwelling to live in, has the intended coverage, and minimises any unintended consequences.
- **Minimising compliance and administration costs:** The policy is supported by clear and simple rules that create certainty for applicants and the regulator ('bright lines') where possible. The preferred approach should minimise the cost of administering the regime for the regulator, and compliance costs for applicants. In addition it should facilitate easy and cost-effective enforcement.

[3]

I. Requirements for consent.

A. Applicable residence class visas

Issue: The Bill provides a pathway for residence class visa holders that are not “*ordinarily resident in New Zealand*”⁴ to purchase a single residential dwelling that will be their main home or residence in New Zealand. The types of residence class visas eligible to use this pathway is to be determined through regulation.

Permanent resident visa holders are entitled to travel to New Zealand at any time and stay in New Zealand indefinitely. The majority of permanent residents will satisfy the time in New Zealand requirements and therefore will be able to purchase residential property without screening. Once the consent holders become “*ordinarily resident in New Zealand*”, through satisfying the time in New Zealand requirements or by becoming a citizen,⁵ all mandatory conditions attached to the purchase will be lifted. Therefore it aligns with the intent of the policy to provide permanent residents, who have not met the time in New Zealand requirements at the time of purchase, a pathway to purchase a single dwelling to reside in.

Resident visa holders are entitled to stay in New Zealand indefinitely provided they are granted entry permission the first time they arrive on a resident visa and their visa is not cancelled (for example, if they are deported after being convicted of certain crime). This type of visa typically has travel conditions attached allowing the visa holder to travel to New Zealand multiple times, and expires if the visa holder is outside New Zealand when the travel conditions expire, or leaves New Zealand after those conditions expire. All residence class visas provide a pathway to become a permanent resident.

Applicants will need to show they have met any conditions imposed and demonstrate a commitment to New Zealand through spending enough time in New Zealand or by meeting other specified criteria.⁶ Approximately 56% of resident visa holders are granted a permanent resident visa within 30 months, with 82% approved within 5 years⁷. Assuming they meet the time in New Zealand requirements, once consent holders obtain permanent resident visas they will become “*ordinarily resident in New Zealand*” at which time all conditions attached to the purchase will be lifted.

All residence class visas provide a pathway to become “*ordinarily resident in New Zealand*” and therefore there is no clear policy rationale for distinguishing between these different visa types. Therefore we recommend that all residence class visas (permanent resident and resident visas) be eligible to use this pathway.

Preferred – Option A: We favour making all holders of residence class visas eligible. This includes resident visa holders and permanent resident visa holders that are not “*ordinarily resident in New Zealand*.”

⁴ Permanent residents are not considered to be “*ordinarily resident in New Zealand*” if they have not been residing in New Zealand for the last 12 months, and/or have not been present in New Zealand for at least 183 days in the last 12 months.

⁵ Permanent Residents and Residents are eligible to be granted citizenship if: (1) they have been living as a New Zealand resident for at least the last 5 years, (2) they have been physically present in New Zealand for a certain amount of time during the last 5 years, and (3) they intend to keep living here.

⁶ Applicants can demonstrate a commitment to New Zealand by meeting the requirements of either: (1) significant period of time spent in New Zealand, (2) tax residence status in New Zealand, (3) investment in New Zealand, (4) establishment of a business in New Zealand, or (5) base established in New Zealand.

⁷ Data based on records from cohorts of first time residence visa applicants approved between 2009/10 - 2011/12 [source: MBIE].

B. Test to determine commitment to reside in New Zealand

Issue: The intention of this policy is that holders of residence class visas with a commitment to reside in New Zealand will be able to purchase a single residential dwelling to live in. It is important to note that the test is not a general test of commitment, which could be satisfied in a number of ways (i.e. financial commitment), but rather is focused more narrowly on the commitment to reside.

<p>Option B1: Declaration on intention to be present in New Zealand for at least 183 days in each 12 month period from the date of consent.</p>	<ul style="list-style-type: none"> • Under this option, applicants would be required to make a declaration in their application that <u>all</u> qualifying individuals (including relevant individuals with control) intend to be present in New Zealand for at least 183 days in each 12 month period from the date of consent. This provides alignment with the trigger event. • There will be no ex ante restrictions on applicants who have not spent significant time in New Zealand in the preceding 12 months.
<p>Option B2: Declaration on intention to become “ordinarily resident in New Zealand” or a citizen</p>	<ul style="list-style-type: none"> • This would operationally the same as option B1, however qualifying individuals would be required to declare an intention to become “ordinarily resident in New Zealand” or gain citizenship. This requires applicants to be on a pathway to permanent residency as well as have an intention to spend at least 183 days in New Zealand every 12 months.
<p>Option B3: Relevant Ministers are satisfied that all qualifying individuals have a commitment to reside in New Zealand.</p>	<ul style="list-style-type: none"> • This option would provide a more stringent upfront test. In most cases, this would be operationally similar to option B1. However it would provide relevant Ministers discretion to request additional information from applicants. • Where requested, an applicant could demonstrate their commitment to New Zealand through a range of identified pathways. • This approach allows for a broader commitment to New Zealand than the narrow commitment to reside. Factors that could be used to demonstrate a commitment to New Zealand are: (1) significant period of time spent in New Zealand, (2) tax residence status in New Zealand, (3) investment in New Zealand, (4) establishment of a business in New Zealand, or (5) base established in New Zealand.
<p>Option B4: Declaration on intention to be present in New Zealand for at least 44 days in each 12 month period from the date of consent, as well as demonstrating broader commitment to New Zealand [option identified by MBIE]</p>	<ul style="list-style-type: none"> • This option places less emphasis on time spent in New Zealand, and recognizes that commitment to New Zealand can be demonstrated in a number of ways including investing in New Zealand. • Operationally, applicants would be required to make a declaration as with option B1 (though for 44, rather than 183 days), and also satisfy at least one of the tests of commitment to New Zealand as outlined in option B3. • Notably this option would align with the requirements for Investor Plus visa holders who are required to spend less time in New Zealand (44 days), but must demonstrate commitment to New Zealand through an investment of \$10 million. • For this approach to be effective, the associated trigger event would also need to be set at 44 days (Option D3).

Option B5: Have spent 183 days of last 12 months in NZ

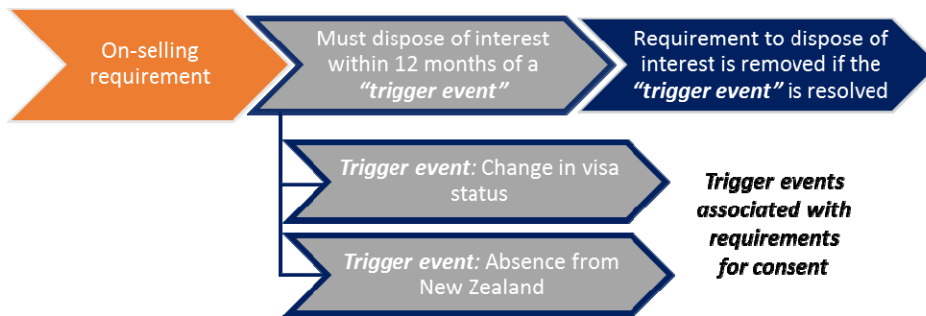
- Under this option, applicants would be required to have been resident in New Zealand for the last 12 months and been present in New Zealand for at least 183 days in the last 12 months.
- This option would introduce consistency into the regime as it mirrors the test to be “*ordinarily resident in New Zealand*” which allows permanent residents in such circumstances to purchase residential land without screening.
- However, this option would be relatively restrictive as it would mean that this pathway was not available to permanent residents that were not already “*ordinarily resident in New Zealand*” and a significant number of resident visa holders would have to wait 12 months before they could apply to purchase a house.

Preferred – Option B1: On balance, we favour option B1 which requires each applicant to make a declaration that they intend to be present in New Zealand for at least 183 days in each 12 month period from the date of consent.

We consider that Option **B1** provides the best balance against the criteria:

- *Policy effectiveness:* this approach provides a simple and effective mechanism to capture an applicant’s forward-looking commitment to reside in New Zealand. We note that as a residence class visa allows applicants to stay in New Zealand indefinitely, a degree of commitment to reside can in part be inferred from this status. Moreover, if the qualifying individual already holds a permanent resident visa, then spending at least 183 days in New Zealand means they become “*ordinarily resident in New Zealand.*” We feel that the compliance mechanisms (*see issue D*), will be adequate to restrict investment in residential property by those that are not committed to residing in New Zealand. For these reasons we prefer this to a more stringent upfront test. This approach minimizes unintended consequences while delivering on the policy intent.
- *Minimizing compliance and administrative costs:* this option is simple and will provide certainty for applicants and the regulator. Introducing a degree of subjectivity into the test would require significant additional time and resourcing for the regulator to process each application, which is likely to be more disruptive for the housing market.

II. On-selling requirement: Trigger events & resolution



C. Change in visa status

Issue: One of the requirements for consent is that the applicant holds a residence class visa. Therefore it follows that if subsequent to obtaining consent, one or more of the qualifying individuals ceases to hold a residence class visa (i.e. they would no longer be eligible to obtain consent), the requirement to sell will be triggered. There are two main ways a qualifying individual's visa status may change which are outlined below.

Expiry of Visa.

Travel conditions allow resident visa holders to leave and re-enter New Zealand up to a certain date. These are typically valid for two years, though visa holders can apply to vary their travel conditions. If the visa holder is outside of the country when the travel conditions associated with the visa expire, then the visa expires on that day. Alternatively, if the travel conditions expire while the visa holder is in New Zealand, then the visa expires on the date the visa holder leaves the country.

Cancellation of Visa. A visa is cancelled in a number of circumstances including:

- The visa holder is deported from New Zealand; or if the person is not deported on the first day that they could be, the person's visa is cancelled the following day;
- refusal of entry permission to its holder, or entry permission being revoked;
- the holder gaining New Zealand citizenship.

Residence class visa holders can become liable for deportation in a number of circumstances including:

- fraudulent, forged or false or misleading information was provided in relation to the visa holder's application for a residence class visa, or any relevant information concealed;
- conditions of the visa were breached materially;
- new information becomes available within 5 years of obtaining a residence class visa that relates to the character of the person at the time the visa was granted that would mean they would have been ineligible for the grant of the visa;
- conviction for a criminal offence;⁸ or
- refugee or protected person status cancelled.

⁸ Liable if held a residence visa for no more than 2 years and court has power to impose prison term of 3 months or more; held a residence class visa for 2-5 years and court has power to impose prison term of 2 years or more; held a residence class visa for 5-10 years and court has power to impose prison term of 5 years or more; or convicted of certain offences under the Immigration Act if the offence was committed not later than 10 years after the person first held a residence class visa.

If a residence class visa holder is liable for deportation, a deportation liability notice may be issued which outlines why the visa holder is liable for deportation, and outlines their rights to appeal. Depending on the circumstances, the person will be entitled to provide submissions as to any good reason why the deportation should not proceed, or lodge an appeal to the Immigration and Protection Tribunal. Appeals are usually heard within 2-4 months of being received by the Tribunal. In certain circumstances, following the Tribunal, the person can seek leave to appeal the decision to the High Court (and subsequently to the Court of Appeal). If the liability for deportation is upheld, the visa is cancelled.

<p>Option C1: Trigger event if residence class visa expires, or a deportation liability notice is issued. <i>Resolved if</i> regain a residence class visa, or the liability for deportation is lifted or suspended.</p>	<ul style="list-style-type: none"> • <i>Trigger event:</i> Under this option, the requirement to on-sell the property within 12 months would be triggered if a qualifying individual's resident <u>visa expires</u>, or they are issued with a <u>deportation liability notice</u>. The visa is not cancelled until all avenues for appeal have been exhausted. • <i>Resolution:</i> The <u>visa expiry</u> trigger event would be resolved and the requirement to on-sell would be lifted if the qualifying individual subsequently regains a residence class visa prior to the required date of disposal. One way this can happen is if the qualifying individual was present in New Zealand for 184 days or more as a resident in at least one of the two years prior to the expiration of the visa. • The <u>deportation liability</u> trigger event would be resolved if the liability for deportation is lifted or suspended. However, there is a risk that the required date of disposal would occur before all appeal rights were exhausted (i.e. the appeals process takes more than 12 months).
<p>Option C2: Trigger event if residence class visa expires or is cancelled. <i>Resolved if</i> regain a residence class visa.</p>	<ul style="list-style-type: none"> • <i>Trigger event:</i> Under this option, the requirement to on-sell the property within 12 months would be triggered if a qualifying individual's resident <u>visa expires</u> or their residence class visa is <u>cancelled</u>. In contrast, this happens after the appeals process is exhausted. • <i>Resolution:</i> As with option C1, the <u>visa expiry</u> trigger event would be resolved if the qualifying individual subsequently regains a residence class visa.

Preferred – Option C2: On balance, we favour adopting Option C2 under which the requirement to on-sell is triggered when one or more qualifying individuals have their visa expire or cancelled. The requirement to on-sell is removed if the qualifying individual subsequently regains a residence class visa.

We consider that Option **C2** provides the best balance against the criteria:

- *Policy effectiveness:* this approach delivers on the policy intent by providing an effective and simple mechanism to ensure that people no longer eligible to reside in New Zealand indefinitely are required to dispose of their interest in the house. This also aligns with the principle of natural justice whereby the qualifying person will have had a fair opportunity to put their case, including exercising appeal rights, before sanctions are imposed. We favour this approach to option C1 as that runs the risk of unintended consequences. Under option C1, the majority of appeals processes would be completed within 12 months, there is a risk that the appeals process may take more than 12 months. In this scenario, the qualifying individual will have already been required to sell, even if they subsequently successfully have their deportation liability overturned.

Minimizing compliance and administrative costs: this trigger event in the preferred approach provides certainty to both the qualifying individual and the regulator as to when the requirement to on-sell is triggered, as well as minimizing complexity by occurring at the conclusion of the appeals process.

D. jAbsence from New Zealand

Issue: To obtain consent, each qualifying individual must make a declaration that they intend to be present in New Zealand for at least 183 days in each 12 month period from the date of consent. – see *Option B1*. A forward-looking test was favoured as a requirement for obtaining consent, however if subsequently there is evidence that the qualifying individual lacks a commitment to reside in New Zealand, then it follows that the requirement to sell is triggered.

<p>Option D1: Absence from NZ for more than 183 days in a 12 month period commencing on the anniversary of the date of consent. <i>Resolved if</i> subsequently meet the 183 day test within the 12 month disposal period.</p>	<ul style="list-style-type: none"> • <i>Trigger event:</i> Under this option, the requirement to on-sell the property within 12 months would be triggered if the qualifying individual were absent from New Zealand for more than 183 days in any 12 month period commencing on the anniversary of the date of consent. This is a ‘bright line’ test and can be determined through data matching with immigration records. • <i>Resolution:</i> Under this option, the trigger event would be resolved and the requirement to on-sell would be lifted, only if the qualifying individual subsequently spent more than 183 days within the 12 months following the trigger event in New Zealand before the required date of disposal.
<p>Option D2: Option D1, with additional option for <i>resolution</i> allowing the qualifying individual(s) to demonstrate to the OIO that they had good reasons for not meeting the test, and they still intend to reside in New Zealand.</p>	<ul style="list-style-type: none"> • <i>Trigger event:</i> see option D1. • <i>Resolution:</i> In addition to the resolution outlined in option D1, there would be an alternate avenue for the requirement to on-sell to be lifted. The regulator would need to be satisfied that despite the absence the qualifying individual has not severed their commitment to reside in New Zealand. • The purpose of this alternate resolution avenue would be to overcome the arbitrary nature of the bright line test in certain circumstances. • The onus will be on the qualifying individual to demonstrate to the satisfaction of the regulator that they meet the test. There will be a number of qualifying factors which include: <ul style="list-style-type: none"> ○ working overseas for the New Zealand Government or accompanying a partner working overseas for such purpose; ○ working for an international organisation that the New Zealand Government belongs to, like the United Nations or accompanying a partner working overseas for such purpose; ○ employed by a person or organisation based in New Zealand or accompanying a partner working overseas for such purpose;⁹ ○ seeking medical treatment overseas; ○ exceptional family circumstances; and/or ○ any other matter deemed satisfactory by relevant Ministers. • The 12 month disposal period would not be paused while the process was underway. The onus would be on the applicant to ensure they apply to the Overseas Investment Office in adequate time ahead of the required date of disposal for it to be considered. The Office may publish guidelines around processing times. In addition, there is the option to include an application fee to accompany this resolution avenue because of the associated administrative burden.

⁹ The first three factors are drawn from the criteria for citizenship by grant – section 8(2)(f)(ii) of the Citizenship Act 1977.

Option D3: Failure to spend at least 44 days in NZ in a 12 month period commencing on the anniversary of the date of consent or spending 6 months continuously out of NZ. *Resolved if* subsequently meet the 44 day test within the disposal period.

[option identified by MBIE]

- *Trigger event:* Under this option, the requirement to on-sell would be triggered if the qualifying individual were absent from New Zealand for more than 44 days in any 12 month period. Alternatively the qualifying individual could cause a trigger event if they were absent for 6 months continuously within the 12 month period. To be effective, this would need to be in conjunction with Option B4.
- *Resolution:* As with Option D1, but the day count requirement would be 44 days rather than 183 days. The rationale for this option is that the time in New Zealand requirement aligns with the time in New Zealand requirement for the Investor Plus visa category.

Preferred – Option D2: On balance, we favour adopting Option D2 under which the requirement to on-sell is triggered when one or more qualifying individuals are absent from New Zealand for more than 183 days in a 12 month period. The requirement to on-sell is removed if either (i) the qualifying individual subsequently meets the 183 day test prior within the 12 month disposal period, or (ii) the regulator is satisfied that despite the absence, the qualifying individual has not severed their commitment to reside in New Zealand.

We consider that Option **D2** provides the best balance against the criteria:

- *Policy effectiveness:* the overall policy intent is to provide residence class visa holders a pathway to purchase New Zealand houses where they have a commitment to reside in New Zealand. This approach therefore delivers on the policy intent by imposing a clear requirement to ensure every qualifying individual that has an ownership in residential property in New Zealand maintains a sufficient presence in New Zealand. The 183 days in New Zealand requirement is consistent with the test for permanent residents to be deemed “*ordinarily resident in New Zealand.*”

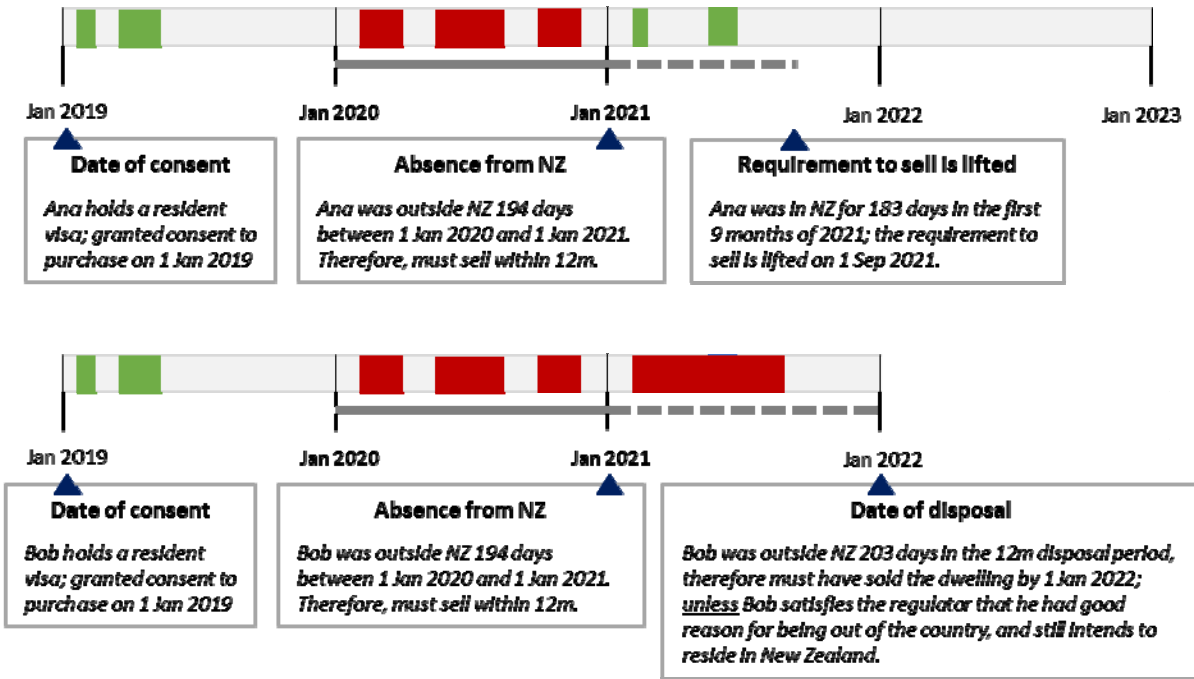
This symmetry means that on the first anniversary of receiving consent, the majority of permanent residents will either have triggered the requirement to sell, or will be deemed to be “*ordinarily resident in New Zealand.*” If all relevant individuals become “*ordinarily resident in New Zealand*” their mandatory conditions will be lifted. Option D3 requires a lesser time in New Zealand but does not align with this criteria of demonstrating sufficient presence in New Zealand. As noted this is a test of the commitment to reside, rather than something which can be satisfied by a broader demonstration of commitment.

There may be circumstances where being limited by the bright line resolution in option D1 leads to unintended (and possible unjust) consequences whereby people with a demonstrated commitment to reside in New Zealand fall outside the 183 day resolution pathway. The alternate avenue in option D2 for resolving the absence from New Zealand trigger provides a mechanism to consider mitigating factors in certain circumstances. This includes where the qualifying individual can demonstrate they have maintained strong links to New Zealand (through working for the New Zealand Government, an international organization or a New Zealand based employer). Alternatively this could provide a resolution pathway in extenuating circumstances (such as seeking medical treatment overseas) where the outcomes would otherwise be considered unjust.

- *Minimizing compliance and administrative costs:* this approach minimizes compliance and administrative costs by providing a ‘bright line’ trigger event. This is consistent with the requirement for permanent residents to have their conditions of consent lifted. Qualifying individuals will be able to determine relatively easily whether they are likely to trigger the requirement to sell, and will be able to plan their travel accordingly to ensure they do not cause a trigger event.

While we expect that the majority of trigger events that are resolved will be by subsequently meeting the 183 day test, we recognize that the alternate avenue for resolution will have an additional administrative burden compared to option D1. Determining the preferred approach therefore requires a trade-off between criteria. We are comfortable supporting option D2 despite the additional administrative cost, as the alternate avenue for resolution will be available in a limited set of circumstances, there is a clear onus on the qualifying individual to satisfy the regulator, and having a safety valve will contribute to the overall policy effectiveness.

Scenarios showing trigger event and resolution.



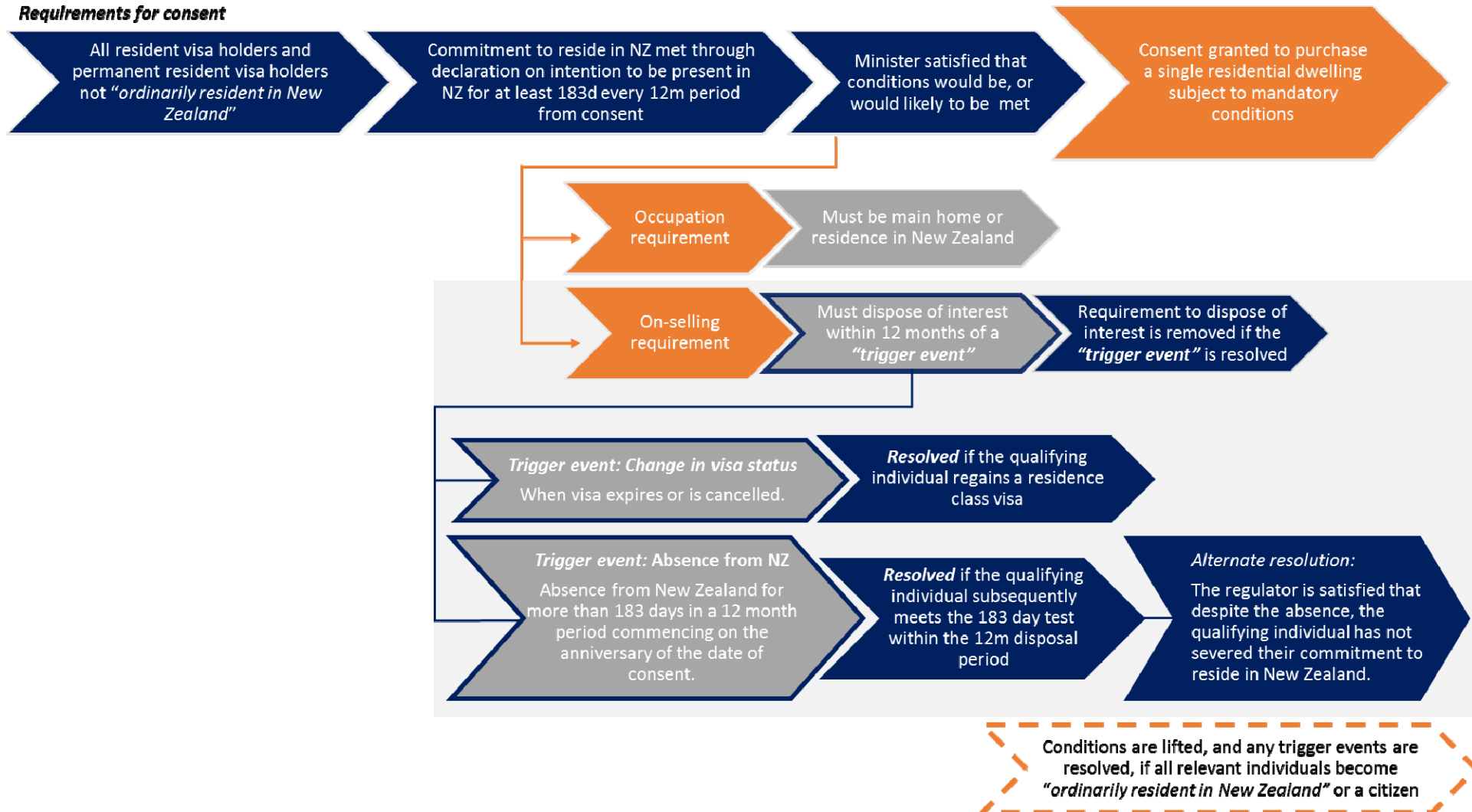
Section 4 is intentionally omitted.

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

The following diagram summarizes the package of options which will best address this policy problem and meet the policy objectives.

Requirements for consent



Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

Giving effect to the preferred option

Legislative process: The preferred option will be given effect through regulation. Empowering provisions will be provided for via amendments to the Overseas Investment Act 2005.

Commencement: The intended commencement date for these regulations is ten days after receiving Royal assent. The new screening requirements will not have a retrospective effect.

Education: The OIO will undertake to provide education for real estate agents and conveyancers on the new regime and their obligations under the regime, as this will be critical to ensure compliance. In addition, it is recommended that others involved in land transactions, including banks, financial advisors, accountants and immigration advisors are educated on the changes. Lastly, it is important that the public is aware of the new requirements.

Role of the Overseas Investment Office

Once implemented, the OIO will hold the primary responsibility for the ongoing operation and enforcement of the new arrangements with respect to sensitive land.

The OIO will need to update their current IT system to accommodate the increased volume of applications and to improve functionality. The OIO will receive additional resourcing to undertake this expanded role. There are three key components of this expanded role:

Detailed screening regime: Applications for this pathway will be screened to ensure that overseas persons meet the requirement for consent to purchase a single residential dwelling.¹⁰

Compliance and monitoring system: All overseas buyers granted consent will have conditions attached to that consent. This will require the OIO to undertake activities to ensure compliance.

Targeted monitoring will need to be carried out to check that transactions do not breach the screening regime and any certification requirements are being properly complied with. If the screening regime is to be seen as robust and effective, surveillance will also need to be undertaken to detect avoidance schemes (such as the use of associates) to get around the screening regime.

Enforcement regime: In order for the policy to be successful, the OIO must have the tools available to investigate possible breaches of the screening regime. The types of things that will need to be investigated include checking situations where people do not get consent when needed, do not comply with conditions imposed on consent, mislead the OIO or adopt avoidance mechanisms to get around the Act. Enhanced enforcement provisions are provided for to some extent in the Bill.

¹⁰ Screening will, to the extent this is practical, seek to verify the land is sensitive only because it is residential, and not sensitive for any other reason – for example if it were 2,000m² or larger and adjacent to the foreshore (this can be a complex exercise).

Role of other parties

Real estate agents and conveyancers will both play a role in implementing the policy. While real estate agents will not have any formal obligations under this policy, we expect they will play an informal role in ensuring prospective buyers are aware of the screening regime. The Bill places formal obligations on conveyancers under this policy, which will require them to certify that, to the best of their knowledge, the purchase is not inconsistent with the screening regime. Immigration NZ will play a role in providing information about visa status and/or time spent in New Zealand to the OIO, conveyancers and/or prospective buyers.

6.2 What are the implementation risks?

As noted, this analysis has been prepared under very tight timeframes. The Government has also indicated that it wants this regime to come into effect relatively quickly. As a result, there are a number of implementation risks, these include:

- some of the design choices may be sub-optimal or have unintended consequences;
- the OIO will only have limited time to operationalize the policy (this will involve recruiting and training staff, designing application forms and systems, and upgrading IT systems); and
- limited time to educate real estate agents, conveyancers and the general public.

Where possible, the OIO will seek to mitigate some of these risks by commencing the work required to operationalize the policy as soon as possible, upon receiving funding. They will also seek to begin the education campaign for the revised regime once the Bill has had its final reading in the House.

The OIO has calculated its initial resourcing requirements based on estimates for the volume of applications it expects under the revised regime. While there is a degree of tolerance around these estimates, if the volume of applications significantly exceeds this, there is a risk that the levels of resourcing provided for will not be sufficient to operate the regime in an efficient and effective manner. This would be addressed through a review of the resourcing.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The OIO will monitor the revised regime through the applications it receives, the consents granted, as well as information it gathers through enhanced compliance, monitoring and enforcement functions.

One of the challenges is that there is no mechanism for the OIO to collect information about transactions involving overseas persons purchasing sensitive land that were not captured by the screening regime (either due to avoidance or because the investor fits within an exemption). Enhanced compliance and enforcement functions will be one mechanism which the OIO can use to monitor whether the revised regime is having its intended effect.

It will be harder to evaluate, particularly in the short term, whether there will be broader system-level impacts from this policy around moderating foreign capital flows into the housing markets during periods when the housing market is out of equilibrium.

7.2 When and how will the new arrangements be reviewed?

While there are no plans for review of this policy currently, it is expected that this is something that could be considered within a review of the residential screening regime and/or New Zealand's broader overseas investment regime. Once this revised regime is implemented, an assessment of the most appropriate time to review the policy will be made. It is likely that this would occur earlier if the impacts of the regime were materially different to what is anticipated.