

Overseas Investment Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends the Overseas Investment Act 2005 (the **Act**) to ensure that investments made by overseas persons in New Zealand will have genuine benefits for the country. The Bill has a focus on residential land, but also makes more general changes to the Act, including enhancing the information-gathering and enforcement powers of the Overseas Investment Office.

The Bill will ensure 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. This will lead to a housing market with prices shaped by New Zealand-based buyers. The Bill will therefore make homes more affordable for New Zealand buyers at some times in the property market cycle, including for first home buyers, while also supporting our efforts to build a more productive economy, by helping redirect capital to 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 held by the relevant territorial authority and could be obtained directly from them, or 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”. The Bill modifies the definition of “ordinarily resident in New Zealand” for the purposes of the new residential land provisions. Under that new definition, 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.

The Bill provides that overseas persons would 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 and are able to demonstrate this would have wider benefits to the country; or
- if they hold an appropriate visa and can show they have committed to reside in New Zealand.

The Bill requires that conditions be imposed if an overseas person purchases residential land utilising one of these exemptions, for example, if an overseas person purchases residential land to build houses on it, they will be required to sell the land when the houses are built.

The Bill enhances the information-gathering and enforcement powers of the Overseas Investment Office, including by providing for civil liability for those involved in a contravention of the Act. These enhancements will assist in ensuring compliance with the Act.

Departmental disclosure statement

The Treasury is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2017&no=5>

Regulatory impact assessment

The Treasury produced a regulatory impact assessment on 30 November 2017 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

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

- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the 10th day after Royal assent.

Clause 3 provides that the Bill amends the Overseas Investment Act 2005 (the **Act**).

The Bill is in 3 Parts. *Part 1* proposes to implement the Government’s policy to bring residential land within the category of “sensitive land” for the purposes of the Act. This means that the restrictions in the overseas investment regime will apply to residential land. For example, section 10 of the Act provides that a transaction requires

consent under the Act if it will result in an overseas investment in sensitive land. *Part 2* contains amendments relating to the consent and conditions regime for overseas investments in sensitive New Zealand assets. These amendments include new tests as part of the criteria for consent for overseas investments in sensitive land where residential land is involved, and mandatory conditions if consent is granted. *Part 3* contains amendments relating to enforcement and miscellaneous matters. Among other things, the regulator's powers (including information-gathering powers) are extended, the potential maximum civil penalty is increased, and the persons on whom a civil penalty may be imposed are extended.

Part 1

Sensitive land

Clause 4 inserts a definition of residential land. For the most part, residential land is defined as land that has a property category of “residential” or “lifestyle” for the purpose of the relevant district valuation roll. Rule F.2 of the Rating Valuations Rules 2008 (LINZS30300) provides for each rating unit to be based on its highest and best use, within a broad property group, using the codes set out in Table 18 of those rules.

The residential category in those rules is defined as “Residential land of a domestic type, including investment flats” and consists of the following:

- apartments which are in multi-storey buildings and are on strata title:
- bare or substantially unimproved land, which is likely to be subdivided into dwelling house sites:
- converted dwelling houses which are now used as rental flats and have 2 or more units of use:
- dwelling houses of a fully detached or semi-detached style situated on their own clearly defined piece of land:
- ownership home units which do not have the appearance of dwelling houses:
- home and income. The dwelling is the predominant use and there is an additional unit of use attached to, or associated with, the dwelling house which can be used to produce income:
- vacant or substantially unimproved land on which it is likely that multiple housing units will be built:
- there is more than one principal dwelling house:
- unit-titled car park which is likely to sell for residential use:
- rental flats which have been purpose-built for rental purposes and have 2 or more units of use:
- vacant or substantially unimproved land on which it is likely that a single dwelling house will be built.

The lifestyle category is defined in the Rating Valuations Rules 2008 as—

“Lifestyle land, generally in a rural area, where the predominant use is for a residence and, if vacant, there is a right to build a dwelling. The land can be of variable size but must be larger than an ordinary residential allotment. The principal use of the land is non-economic in the traditional farming sense, and the value exceeds the value of comparable farmland.”

The lifestyle category includes the following:

- bare or substantially unimproved land, which is likely to be subdivided into smaller lifestyle lots:
- improved to the extent that there is some residential accommodation sited on the land:
- vacant or substantially unimproved land without immediate subdivision potential.

The lifestyle category does not include land categorised within other categories, for example, “commercial”, which includes accommodation such as motels and hotels and elderly rest homes.

Clause 5 inserts the item residential land into Schedule 1 of the Act, which makes it sensitive land to which the Act applies.

Part 2

Amendments relating to consent and conditions regime for overseas investments in sensitive New Zealand assets

Clause 6 amends the overview section in the Act.

Clause 7 amends the main interpretation section of the Act.

Subclauses (1) and (3) relate to the new residential land provisions.

Subclauses (2) and (5) relate to enforcement.

Subclause (4) relates to the definition of ordinarily resident in New Zealand. This definition is important because, if a person is ordinarily resident in New Zealand (or a New Zealand citizen), the person is not considered an overseas person and the consent requirement does not apply.

The definition is changed for the purposes of an overseas investment in sensitive land that is or includes residential land. Currently under the Act, a person is ordinarily resident in New Zealand if the person holds a residence class visa granted under the Immigration Act 2009 (ie, a permanent resident visa or a resident visa (*see* section 4 of the Immigration Act 2009)) and is in one of the following categories:

- is domiciled in New Zealand (*see* section 9 of the Domicile Act 1976); or
- is residing in New Zealand with the intention of residing there indefinitely, and has done for the immediately preceding 12 months. Absence from New Zealand for no more than 183 days in aggregate in the last 12 months does not prevent a person from satisfying the requirement for residing in New Zealand for the last 12 months.

The new definition for the purposes of an overseas investment in sensitive land that is or includes residential land is a narrower, brighter-line test as follows:

- a person must hold a permanent resident visa;
- domicile is not a means by which the person can satisfy the rest of the test;
- a new test of residency in New Zealand replaces the requirement to assess a person's intention to reside in New Zealand indefinitely.

Clause 8 proposes a consequential amendment to section 7 that is only a tidy-up.

Clause 9 provides for transitional, savings, and related provisions in *new Schedule 1AA*.

Clause 10 replaces section 16(1)(e), which contains some of the criteria for consent for overseas investments in sensitive land.

Under the current Act, applicants for consent must satisfy certain criteria including the core investor test criteria, which relate to matters such as business experience and acumen, financial commitment, good character, and not being certain types of convicted or deported persons. Those criteria are unchanged by the Bill.

Currently, under section 16(1)(e) of the Act, consent to acquire sensitive land will be granted only if one of the following criteria is met:

- the transaction will, or is likely to, benefit New Zealand;
- the relevant overseas person intends to reside in New Zealand indefinitely.

The Bill proposes to replace those 2 criteria in current section 16(1)(e) of the Act with 3 new pathways as follows:

- a commitment to New Zealand test (*see new section 16A*);
- a test designed to increase housing on residential land (*see new section 16C*);
- a benefit to New Zealand test (*see new section 16E*).

Clause 11 inserts *new sections 16A to 16F*, which contain the new pathways for screening for consent to buy sensitive land. The new commitment to New Zealand test and the benefit test both apply to residential land and other sensitive land, but in general the requirements are different depending on whether the land involved in the transaction is or includes residential land.

If the transaction does not involve any residential land, the net effect of the new sections is the same as that of existing section 16(1)(e). An overseas person who intends to reside in New Zealand indefinitely can meet—

- the new test in *new section 16A(2)* (commitment to New Zealand test) instead of existing section 16(1)(e)(i); or
- the benefit test in *new section 16E* instead of existing section 16(1)(e)(ii) and (iii).

If the sensitive land is or includes residential land,—

- the test in *new section 16A(3)* is new. (The test applies, for example, to people who hold a relevant residence class visa and who meet requirements, to be set in regulations, about their commitment to reside in New Zealand):
- the test in *new section 16C* is new. (The test, in summary, relates to increasing the number of dwellings, improving land for subdivision and other accommodation uses, and then on-selling or (in the case of certain accommodation uses only) operating in a certain way and not occupying any of the dwellings. This particular test is only available if the land is sensitive land only because it is residential land, ie, it is not also sensitive for some other reason under Schedule 1 of the Act):
- the benefit test contains new requirements, as well as the existing benefit test.

No change is proposed in the Bill to the core provisions of the Act about the approach to the criteria for consent (*see* section 14), subject to the following:

- applicants for consent for overseas investments in sensitive land must state in their application for consent which new test or tests under *new section 16(1)(e)* enables section 16 criteria to be met for the purpose of section 14(1)(c):
- in respect of the new residential land provisions,—
 - for certain tests, applicants must also state which increased housing outcome or outcomes they propose will result:
 - the simpler test (eg, whether there is an increase in residential dwellings “before and after” the investment) applies (*see new section 16D(3)*):
 - in some cases, applications for consent can be made and considered in advance of the actual transaction being identified (*see new section 23A*).

Clause 12 proposes consequential amendments to section 17 to reflect the changes to section 16.

Clause 13 amends section 23 to require applicants to nominate, in their application for consent, which test they are electing to be screened under.

Clause 14 inserts *new section 23A* to enable the granting of “standing consents” for land that is only sensitive land because it is residential land (ie, the land is not also sensitive for some other reason under Schedule 1 of the Act). This will enable consents to be granted once the overseas purchaser has been screened, but before the land or the transaction has been screened, provided that certain conditions are met.

Clauses 15 to 17 relate to consents and conditions of consent.

Clause 18 amends section 31, which relates to what the regulator does. The amendment clarifies that the regulator’s functions include monitoring compliance with the Act, investigating conduct, and enforcing the Act. This substantially reflects existing things that the regulator does under the Act.

Clause 19 relates to the Ministerial directive letter.

Part 3

Enforcement and other miscellaneous matters

Subpart 1 relates to enforcement.

Clause 20 changes the heading of subpart 4 of Part 2 from “Monitoring” to “Information-gathering powers”.

Clauses 21 to 23 amend sections 38 to 40, which allow the regulator to give a notice that requires certain information or documents to be provided. The amendments require the information or documents to be provided in the manner specified in the notice.

Clause 24 amends section 41, which currently allows the regulator to require information and documents for the purpose of detecting offences. The section is extended to allow the regulator to require information or documents if the regulator has reasonable grounds to believe that the supply of the information or documents is necessary or desirable for the purposes of administering or enforcing the Act.

Clause 25 inserts *new sections 41A to 41D*. In summary,—

- *new section 41A* deals with the effect of a proceeding relating to the regulator’s information-gathering powers. Until a final decision is given, the powers may continue to be exercised and no person is excused from fulfilling the person’s obligations to provide information or documents (unless a court orders otherwise):
- *new section 41B* provides for the effect of a final decision that an exercise of a power is unlawful, including requiring the destruction of information or documents that have been unlawfully collected (unless a court orders otherwise):
- *new section 41C* provides for information and documents obtained by the regulator under section 41 to be published or disclosed only in specified circumstances (for example, when exercising or performing the regulator’s powers, functions, or duties):
- *new section 41D* allows the regulator to impose conditions relating to the publication or disclosure of information.

Clause 26 inserts *new sections 41E and 41F*. In summary,—

- *new section 41E* allows the regulator to give a notice requiring property to be disposed of if the regulator has reasonable grounds to believe that there has been a contravention of the Act. The property must be disposed of within the time and in the manner specified in the notice:
- *new section 41F* gives a person protection from civil or criminal liability in relation to the contravention if they dispose of the property within the time and in the manner specified in the notice. Any other person who is involved in the contravention may still be liable for a civil penalty.

A failure to comply with the notice under *new section 41E* is not itself a contravention of the Act that gives rise to any civil or criminal liability. In contrast, section 47

provides for a similar power relating to disposal, but in that case orders of disposal are made and enforced as court orders.

Clause 27 amends section 46, which relates to an offence of making a false or misleading statement. The amendment clarifies that the offence applies to materially false or misleading statements.

Clause 28 amends section 48, which allows the court to impose a civil penalty. The amendments—

- extend the provision to allow a penalty to be imposed on a person who is involved in a contravention (for example, a person who aids or abets the contravention or is otherwise knowingly concerned in, or a party to, the contravention);
- increase the potential maximum civil penalty. Currently, the maximum penalty must not exceed the higher of certain amounts, including the quantifiable gain received by the person in contravention of the Act. This has been increased to 3 times the amount of the quantifiable gain.

Clause 29 inserts *new section 48A* to give a defence to a person who is involved in a contravention (where, for example, the person took all reasonable and proper steps to ensure that the Act was complied with).

Clause 30 corrects section 51 so that it applies better to persons relying on exemptions.

Clause 31 inserts *new section 51A*. *New section 51A* applies to a lawyer or a conveyancing practitioner who is acting in relation to the purchase of residential land. It requires the lawyer or practitioner to give a certificate that, to the best of that person's knowledge, the purchaser will not breach the Act by giving effect to the transaction. A failure to give the certificate is an offence with a maximum fine of \$20,000.

Clause 32 replaces sections 54 and 55, which relate to service. The main changes are to—

- clarify that the provisions apply whenever notices or other documents are given, provided, or served by the regulator under the Act; and
- provide for service in New Zealand on overseas persons (and other persons) who are not consent holders; and
- clarify how to prove that documents have been given, provided, or served.

Subpart 2 contains miscellaneous provisions.

Clause 33 amends section 61, which contains the regulation-making powers. Some of the more significant proposed changes are to enable regulations to be made—

- to prescribe classes of visa, and factors for assessing commitment to New Zealand, for the purposes of *new section 16A(3)*;
- to provide for the acquisition by a Māori person of an interest in Māori freehold land:

- to implement any obligation that has entered into force for New Zealand before the commencement of the Bill under any international agreement and that relates to either or both of overseas investments in sensitive land and overseas investments in significant business assets.

Clause 34 inserts *new Schedule 1AA*, which contains transitional, savings, and related provisions. The main effect of these provisions is that the Act (as in force before commencement) continues to apply to transactions entered into before commencement as if this Bill had not been enacted. This applies even if an application for consent that relates to a transaction entered into before commencement is made after commencement.

This position is subject to 2 qualifications relating to the new enforcement provisions. The new information-gathering powers in section 41 and the new service provisions in *new sections 54 to 55A* apply to matters before and after commencement.

Hon David Parker

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Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Overseas Investment Amendment Act **2017**.

2 Commencement

This Act comes into force on the 10th day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Overseas Investment Act 2005 (the **principal Act**).

Part 1 Sensitive land

4 Section 6 amended (Interpretation)

- (1) In section 6(1), insert in their appropriate alphabetical order:

district valuation roll means the roll that each territorial authority must prepare and maintain under section 7 of the Rating Valuations Act 1998 for its own district in accordance with rules made under that Act 5

residential land—

- (a) means land that has a property category of residential or lifestyle in, or for the purpose of, the relevant district valuation roll; and 10
- (b) includes a residential flat in a building owned by a flat owning company (where terms have the same meanings as in section 121A of the Land Transfer Act 1952), regardless of whether the building is on land within a property category referred to in **paragraph (a)** 15

- (2) In section 6(1), replace the definition of **interest** with: 15

interest—

- (a) includes a legal or an equitable interest: 20
- (b) includes, in relation to land, a right or licence to occupy a specified residential flat by virtue of holding securities of a person who is, or who owns or controls (directly or indirectly), a flat owning company (where terms have the same meanings as in section 121A of the Land Transfer Act 1952) 25

5 Schedule 1 amended

In Schedule 1, table 1, above the item relating to non-urban land, insert:

residential land —

Part 2

25

Amendments relating to consent and conditions regime for overseas investments in sensitive New Zealand assets

6 Section 4 amended (Overview)

- (1) In section 4(1)(b)(iv), replace “monitoring” with “information-gathering”. 30
- (2) In section 4(1)(b)(vii), after “enactments”, insert “(and *see also* **Schedule 1AA** for further transitional, savings, and related provisions)”. 30

7 Section 6 amended (Interpretation)

- (1) In section 6(1), insert in their appropriate alphabetical order:

excluded accommodation facility means—

- (a) a hospital; or
- (b) a hotel, motel, inn, hostel, or boarding house; or
- (c) a camping ground; or
- (d) any facility within a class set out in regulations as a class of facility to be treated as an additional excluded accommodation facility in this Act 5
- long-term accommodation facility—**
- (a) means—
- (i) a retirement village or rest home; or
- (ii) a hostel within the meaning of section 2 of the Education Act 1989, or other facility used or intended to be used to provide accommodation to students in accordance with the requirements of section 5B of the Residential Tenancies Act 1986; and 10
- (b) means any other facility that is operated, or is intended to be operated, for long-term accommodation for residential purposes with some degree or provision of assistance or care for persons who dwell there; but 15
- (c) does not include any facility to the extent that it is, or is part of, an excluded accommodation facility
- mandatory conditions,—**
- (a) in relation to a consent granted on the basis that the test in **section 16A(3)** (commitment to New Zealand) is met, means all of the conditions that are set, in accordance with **section 34(3)(ba)(i)**, for the purpose of imposing the occupation and on-selling requirements in **section 16B**: 20
- (b) in relation to a consent granted on the basis that the test in **section 16C** (increased housing on residential land) is met, means all of the conditions that are set, in accordance with **section 34(3)(ba)(ii)**, for the purpose of requiring the outcomes in **section 16D**: 25
- (c) in relation to a consent granted on the basis that the test in **section 16E** (benefit to New Zealand) is met, means all of the conditions set, in accordance with **section 34(3)(ba)(iii)**, for the purpose of **section 16F** 30
- relevant interest**, in relation to residential land, means—
- (a) any interest in the residential land:
- (b) any right or interest in securities of a person who owns or controls (directly or indirectly) any interest in the residential land
- residential (but not otherwise sensitive) land**, in relation to an overseas investment in sensitive land, means that the relevant land is land that— 35
- (a) is, or includes, residential land; but
- (b) is not otherwise sensitive under Part 1 of Schedule 1
- residential dwelling—**

- (a) means a building or group of buildings, or part of a building or group of buildings, that is—
- (i) used, or intended to be used, only or mainly for residential purposes; and
 - (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
- (b) does not include any dwelling—
- (i) to the extent that it is, or is part of, a long-term accommodation facility or an excluded accommodation facility; or
 - (ii) within a class set out in regulations as a class of dwellings not to be treated as residential dwellings in this Act
- (2) In section 6(1), insert in their appropriate alphabetical order:
- conveyancer**, **conveyancing**, and **conveyancing services** have the same meanings as in section 6 of the Lawyers and Conveyancers Act 2006
- involved** has the meaning set out in **subsection (7)**
- provider** means a lawyer or a conveyancer who provides conveyancing services
- (3) In section 6(1), definition of **farm land**, after “means land”, insert “(other than residential (but not otherwise sensitive) land)”.
- (4) Replace section 6(2) with:
- (2) In this Act, a person is **ordinarily resident in New Zealand**,—
- (a) for the purposes of an overseas investment in sensitive land that is or includes residential land, if the person—
 - (i) holds a permanent resident visa granted under the Immigration Act 2009; and
 - (ii) has been residing in New Zealand for the immediately preceding 12 months; and
 - (iii) has been present in New Zealand for 183 days or more in the immediately preceding 12 months (counting presence in New Zealand for part of a day as a presence for a whole day):
 - (b) for any other purpose, if the person—
 - (i) holds a residence class visa granted under the Immigration Act 2009; and
 - (ii) is in one of the following categories:
 - (A) is domiciled in New Zealand; or
 - (B) is residing in New Zealand with the intention of residing there indefinitely, and has done for the immediately preceding 12 months (*see* subsection (3)).

- (5) After section 6(6), insert:
- (7) In this Act, a person is **involved** in a contravention, the commission of an offence, or a failure to comply if the person—
- (a) has aided, abetted, counselled, or procured the contravention, the commission of the offence, or the failure; or 5
 - (b) has induced, whether by threats or promises or otherwise, the contravention, the commission of the offence, or the failure; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention, the commission of the offence, or the failure; or 10
 - (d) has conspired with others to effect the contravention, the commission of the offence, or the failure.
- (8) **Subsection (7)** does not apply to proceedings for offences (but *see* Part 4 of the Crimes Act 1961, which relates to parties to the commission of offences).
- 8 Section 7 amended (Who are overseas persons)** 15
In section 7(1), replace “resident” with “ordinarily resident in New Zealand”.
- 9 New section 8A and cross-heading inserted**
After section 8, insert:
- Transitional, savings, and related provisions*
- 8A Transitional, savings, and related provisions** 20
The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.
- 10 Section 16 amended (Criteria for consent for overseas investments in sensitive land)**
Replace section 16(1)(e) with: 25
- (e) one of the following tests is met:
 - (i) the commitment to New Zealand test in **section 16A**;
 - (ii) the benefit to New Zealand test in **section 16E**;
 - (iii) the increased housing on residential land test in **section 16C** (but this test is only available if the relevant land is residential (but not otherwise sensitive) land): 30
- 11 New sections 16A to 16F inserted**
After section 16, insert:
- 16A Commitment to New Zealand test**
- (1) In relation to an overseas investment in sensitive land,— 35

- (a) if the relevant land is or includes residential land, **subsection (3)** applies;
- (b) otherwise, **subsection (2)** applies.
- (2) If this subsection applies, the commitment to New Zealand test is met if the relevant overseas person is (or, if that person is not an individual, each individual with control of the relevant overseas person is)—
- (a) a New Zealand citizen; or
- (b) ordinarily resident in New Zealand; or
- (c) intending to reside in New Zealand indefinitely.
- (3) If this subsection applies, the commitment to New Zealand test is met if—
- (a) the relevant overseas person is (or, if that person is not an individual, each relevant individual with control is)—
- (i) a New Zealand citizen; or
- (ii) ordinarily resident in New Zealand; or
- (iii) the holder of a residence class visa (within the meaning of the Immigration Act 2009) specified in regulations, or a person with a nationality status specified in regulations, who meets the requirements for showing commitment to reside in New Zealand that are set out in regulations for that visa class or type or specified nationality status (a **qualifying individual**); and
- (b) if meeting the test relies on **paragraph (a)(iii)**, the relevant Ministers are satisfied that, if consent were granted, the mandatory conditions that the relevant Ministers would attach to the consent (*see section 16B*) (which relate to occupation and on-selling requirements) would be, or would likely be, met.
- (4) In this section, every individual with control of the relevant overseas person (as determined in accordance with section 15(2)) is a **relevant individual with control** unless the relevant Ministers are satisfied the individual has, and (if consent were granted) would continue to have,—
- (a) no beneficial interest in or beneficial entitlement to the relevant interest in the residential land; and
- (b) a satisfactory reason to not occupy the residential dwelling as their main home or residence in New Zealand.
- 16B Occupation and on-selling requirements and mandatory conditions: commitment to New Zealand test**
- (1) This section applies if an application for consent is being considered under the commitment to New Zealand test in **section 16A(3)** and there are 1 or more qualifying individuals.

- (2) If granted, the consent must be made subject to conditions that attach to the following occupation and on-selling requirements:
- Occupation requirement*
- (a) the purpose of the overseas investment is to acquire 1 residential dwelling or dwelling in a long-term accommodation facility— 5
- (i) that is constructed on, or that is being or will be constructed on, the residential land; and
- (ii) for occupation, by the relevant overseas person (or, if that person is not an individual, all the relevant individuals with control), as their main home or residence in New Zealand; and 10
- On-selling requirement*
- (b) if, in relation to a qualifying individual, a trigger event occurs, the consent holder must dispose of the relevant interest within 12 months of the date that the trigger event occurs (unless, by the required date of disposal, the trigger event is resolved). 15
- (3) In this section,—
- relevant individuals with control** and **qualifying individual** have the meanings set out in **section 16A**
- trigger event**, in relation to a qualifying individual, means an event or events set out in regulations for the class or type of visa held or specified nationality status. 20
- (4) In this section, a **trigger event is resolved** if the qualifying individual becomes—
- (a) a holder of a residence class visa (within the meaning of the Immigration Act 2009) specified in regulations, or a person with a nationality status specified in regulations, who meets the requirements for showing commitment to reside in New Zealand that are set out in regulations for that visa class or type or specified nationality status; or 25
- (b) ordinarily resident in New Zealand; or
- (c) a New Zealand citizen. 30
- (5) Conditions imposed on a consent in accordance with **subsection (2)** cease to apply to the consent if the relevant overseas person becomes (or, if that person is not an individual, all the relevant individuals with control become) ordinarily resident in New Zealand or a New Zealand citizen.
- 16C Increased housing on residential land test** 35
- The increased housing on residential land test is met if the relevant Ministers are satisfied that, if consent were granted, the mandatory conditions that the relevant Ministers would attach to the consent (which relate to increased hous-

ing and on-selling outcomes, *see* **section 16D**) would be, or would likely be, met.

16D Outcomes and mandatory conditions: increased housing on residential land test

- (1) This section applies if an application for consent is being considered under the increased housing on residential land test in **section 16C**. 5
- (2) If granted, the consent must be made subject to conditions that attach to either or both of the following required outcomes for the residential land:
- (a) increased residential use and on-sale (*see* **subsection (4)**):
- (b) construction or extension, and operation, of a long-term accommodation facility (*see* **subsection (5)**). 10
- (3) The outcomes that relate to increasing housing are measured by comparing the expected result of the overseas investment against the state of the residential land before the transaction takes effect.
- (4) In **subsection (2), increased residential use and on-sale**, in relation to residential land, means that— 15
- (a) 1 or more of the following is done to the land:
- (i) the number of residential dwellings constructed on the land is increased (including an increase from 0):
- (ii) a long-term accommodation facility is constructed on the land, or the number of dwellings in a long-term accommodation facility that is on the land is increased: 20
- (iii) development works on the land to support the doing of things described in either or both of **subparagraphs (i) and (ii)**; and
- (b) within a specified period, the relevant overseas person retains no relevant interest in the residential land; and 25
- (c) for so long as the relevant overseas person has a relevant interest in the residential land, neither the relevant overseas person, nor any person with a 25% or more ownership or control interest in the relevant overseas person, nor any of their associates occupy the land for residential purposes. 30
- (5) In **subsection (2), construction or extension, and operation, of a long-term accommodation facility**, in relation to residential land, means that—
- (a) a long-term accommodation facility is constructed on the land, or the number of dwellings in a long-term accommodation facility that is on the land is increased; and 35
- (b) within a specified period, the whole of the land is operated by the consent holder, or by a grantee under a permitted lease, as a long-term accommodation facility; and

- (c) for so long as the relevant overseas person has a relevant interest in the residential land, neither the relevant overseas person, nor any person with a 25% or more ownership or control interest in the relevant overseas person, nor any of their associates occupy the land for residential purposes. 5
- (6) In this section,—
- development works—**
- (a) includes the construction, alteration, demolition, or removal of a building or infrastructure; and
- (b) includes siteworks (including earthworks) that are preparatory to, or associated with, the matters set out in **paragraph (a)**; but 10
- (c) does not include subdivision of land without other development works
- permitted lease** means a lease that—
- (a) is for a term of 3 years or more (excluding rights of renewal, whether of the grantor or grantee); and 15
- (b) is to a grantee who is not an associate of the relevant overseas person.
- 16E Benefit to New Zealand test**
- The benefit to New Zealand test is met if all of the following are met:
- (a) the overseas investment will, or is likely to, benefit New Zealand (or any part of it or group of New Zealanders), as determined by the relevant Ministers under section 17; and 20
- (b) if the relevant land is or includes non-urban land that, in area (either alone or together with any associated land) exceeds 5 hectares, the relevant Ministers determine that that benefit will be, or is likely to be, substantial and identifiable; and 25
- (c) if the relevant land is or includes residential land, the relevant Ministers are satisfied that, if consent were granted, the mandatory conditions that the relevant Ministers would attach to the consent (*see section 16F*) would be, or would likely be, met.
- 16F Mandatory conditions for sensitive land that is residential land: benefit to New Zealand test** 30
- (1) This section applies if an application for consent for an overseas investment in sensitive land is being considered under the benefit to New Zealand test in **section 16E** and the relevant land is, or includes, residential land.
- (2) If granted, the consent must be made subject to 1 or more of the following conditions in relation to the residential land: 35
- (a) conditions that attach to the required outcome or outcomes for the residential land from the list in **section 16D(2)**:

| | | |
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| | (b) a condition that, within a specified period, the relevant overseas person retains no relevant interest in the residential land: | |
| | (c) a condition that, for so long as the relevant overseas person has a relevant interest in the residential land, the residential land will not be used for residential dwellings or long-term accommodation facilities. | 5 |
| 12 | Section 17 amended (Factors for assessing benefit of overseas investments in sensitive land) | |
| (1) | In section 17(1), replace “If section 16(1)(e)(ii) applies” with “For the purposes of section 16E(a) and (b) ”. | |
| (2) | In section 17(1)(b), replace “section 16(1)(e)(ii) and (iii)” with “ section 16E(a) and (b) ”. | 10 |
| 13 | Section 23 amended (Requirements for application for consent) | |
| | After section 23(1)(c), insert: | |
| (ca) | if the application is for consent for an overseas investment in sensitive land,— | 15 |
| (i) | in all cases state the test or tests that the applicant proposes should be applied from the available tests in section 16(1)(e) ; and | |
| (ii) | if the application is for consent under the increased housing on residential land test in section 16C , state the outcome or outcomes under section 16D(2) that the applicant proposes will result from the transaction; and | 20 |
| (iii) | if the application is for consent under the benefit to New Zealand test in section 16E and involves sensitive land that is or includes residential land, state the proposed use of the land (including any outcome or outcomes from the list in section 16D(2) that the applicant proposes will result from the transaction); and | 25 |
| 14 | New section 23A inserted (Applications for “standing consent” in advance of transaction) | |
| | After section 23, insert: | |
| 23A | Applications for “standing consent” in advance of transaction | 30 |
| (1) | A person may apply for consent to enter into an unspecified future transaction or transactions in respect of residential (but not otherwise sensitive) land that falls within a class of transactions described in the application (a standing consent) in either of the following circumstances: | |
| (a) | if the person applies for consent under the commitment to New Zealand test in section 16A(3) and the class of transactions for which consent is sought is overseas investments for the purpose described in section 16B(2)(a) ; or | 35 |

- (b) if the person applies under the increased housing on residential land test in **section 16C**.
- (2) The relevant Ministers may, despite section 14(1), grant a standing consent only if the relevant Ministers are satisfied that—
- (a) the criteria in section 16(1)(a) to (d) are met; and 5
- (b) the standing consent is subject to a condition that the regulator must be notified of the transaction, or each transaction, to which the consent will apply, at the time, and in the manner, specified by the regulator in the consent; and
- (c) the standing consent is subject to other conditions that ensure that the commitment to New Zealand test in **section 16A(3)**, or the increased housing on residential land test in **section 16C** (as the case may be), is met for each transaction to which the consent will apply, and the relevant Ministers are satisfied those conditions would be, or would likely be, met. 10 15
- (3) A standing consent is only a consent for a transaction for the purposes of this Act if the transaction—
- (a) is notified to the regulator as required by the conditions of the consent; and
- (b) meets the other conditions to which the consent is subject. 20

15 Section 25 amended (Granting or refusal of consent)

Repeal section 25(1)(c).

16 New sections 25A and 25B inserted

After section 25, insert:

- 25A Conditions of consent** 25
- (1) A consent granted under this Act may, in addition to the automatic conditions in **section 25B** (which apply to every consent) and any conditions that this Act requires be imposed on the consent, be made subject to such other conditions (if any) that the relevant Minister or Ministers think appropriate.
- (2) Conditions of a consent may— 30
- (a) expand on, or be similar to, mandatory conditions for the consent:
- (b) expand on, be similar to, or be the same as conditions that this Act requires be imposed on other consents.
- (3) **Subsection (2)** does not limit **subsection (1)**.
- (4) For the purpose of enforcing a condition, the relevant Minister or Ministers 35 may enter into a contract or deed with an applicant.

| | | |
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| 25B | Automatic conditions: every overseas investment | |
| | It is a condition of every consent, whether or not it is stated in the consent, that— | |
| | (a) the information provided by each applicant to the regulator or the relevant Minister or Ministers in connection with the application was correct at the time it was provided; and | 5 |
| | (b) each consent holder must comply with the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent is granted, unless compliance should reasonably be excused. | 10 |
| 17 | Section 28 repealed (Conditions of consent) | |
| | Repeal section 28. | |
| 18 | Section 31 amended (What regulator does) | |
| | After section 31(h), insert: | |
| | (ha) monitor compliance with, investigate conduct that constitutes or may constitute a contravention or an involvement in a contravention of, and enforce this Act and the regulations: | 15 |
| 19 | Section 34 amended (Ministerial directive letter) | |
| | After section 34(3)(b), insert: | |
| | (ba) conditions of consent, including— | 20 |
| | (i) mandatory conditions for the purpose of imposing the occupation and on-selling requirements in section 16B : | |
| | (ii) mandatory conditions for the purpose of requiring the outcomes in section 16D : | |
| | (iii) mandatory conditions for the purpose of section 16F : | 25 |

Part 3

Enforcement and other miscellaneous matters

Subpart 1—Amendments relating to enforcement

| | | |
|-----------|---|----|
| 20 | Subpart 4 heading in Part 2 replaced | |
| | In Part 2, replace the subpart 4 heading with: | 30 |
| | Subpart 4—Information-gathering powers | |
| 21 | Section 38 amended (Regulator may require consent holder to provide information for monitoring purposes) | |
| | In section 38(2)(a), after “within the time”, insert “, and in the manner,”. | |

- 22 Section 39 amended (Regulator may require any person to provide information for statistical or monitoring purposes)**
In section 39(2)(a), after “within the time”, insert “, and in the manner,”.
- 23 Section 40 amended (Regulator may require consent holder to provide statutory declaration as to compliance)** 5
In section 40(2)(a), after “within the time”, insert “, and in the manner,”.
- 24 Section 41 amended (Regulator may require information and documents for purpose of detecting offences)**
- (1) In the heading to section 41, replace “**for purpose of detecting offences**” with “**to be provided for purpose of administering or enforcing Act**”. 10
- (2) Replace section 41(1) with:
- (1) If the regulator has reasonable grounds to believe that it is necessary or desirable for the purposes of administering or enforcing this Act, the regulator may, by written notice, require any person (A)—
- (a) to provide to the regulator, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or 15
- (b) to provide to the regulator any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or 20
- (c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice).
- (3) In section 41(2), after “within the time”, insert “, and in the manner,”. 25
- (4) After section 41(4), insert:
- (5) Sections 38 to 40 do not limit this section.
- 25 New sections 41A to 41D inserted**
After section 41, insert:
- 41A Effect of proceedings** 30
- (1) If a person commences a proceeding in any court in respect of the exercise of any powers conferred by any of sections 38 to 41, until a final decision in relation to the proceeding is given,—
- (a) the powers may be, or may continue to be, exercised as if the proceeding had not been commenced; and 35
- (b) no person is excused from fulfilling the person’s obligations under any of those sections by reason of the proceeding.

- (2) However, the court may make an interim order overriding the effect of **subsection (1)**, but only if the court is satisfied that—
- (a) the applicant has established a prima facie case that the exercise of the power in question is unlawful; and
 - (b) the applicant would suffer substantial harm from the exercise or discharge of the power or obligation; and
 - (c) if the power or obligation is exercised or discharged before a final decision is made in the proceeding, none of the remedies specified in **subsection (3)**, or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and
 - (d) the terms of the order do not unduly hinder or restrict the regulator in performing or exercising the regulator’s functions, powers, or duties under this Act.
- (3) The remedies are as follows:
- (a) any remedy that the court may grant in making a final decision in relation to the proceeding (for example, a declaration):
 - (b) any damages that the applicant may be able to claim in concurrent or subsequent proceedings:
 - (c) any opportunity that the applicant may have, as defendant in a proceeding, to challenge the admissibility of any evidence obtained as a result of the exercise or discharge of the power or obligation.

Compare: 2011 No 5 s 57

41B Effect of final decision that exercise of powers under sections 38 to 41 unlawful

- (1) This section applies in any case where it is declared, in a final decision given in any proceeding in respect of the exercise of any powers conferred by any of sections 38 to 41, that the exercise of any powers conferred by any of those sections is unlawful.
- (2) If this section applies, to the extent to which the exercise of those powers is declared unlawful, the regulator must ensure that, immediately after the decision of the court is given,—
- (a) any information obtained as a consequence of the exercise of powers declared to be unlawful and any record of that information are destroyed; and
 - (b) any documents, or extracts from documents, that are obtained as a consequence of the exercise of powers declared to be unlawful are returned to the person who previously had possession or control of them, and any copies of those documents or extracts are destroyed; and
 - (c) any information derived from or based on such information, documents, or extracts is destroyed.

- (3) However, the court may order that any information, record, or copy of any document or extract from a document may, instead of being destroyed, be retained by the regulator subject to any terms and conditions that the court imposes.
- (4) No information, and no documents or extracts from documents, obtained as a consequence of the exercise of any powers declared to be unlawful, and no record of any such information or document,—
- (a) are admissible as evidence in any civil proceeding unless the court hearing the proceeding in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence: 10
- (b) are admissible as evidence in any criminal proceeding if the evidence is excluded under section 30 of the Evidence Act 2006:
- (c) may otherwise be used in connection with the exercise of any powers conferred by this Act unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence. 15

Compare: 2011 No 5 s 58

41C Confidentiality of information and documents

- (1) This section applies to the following information and documents:
- (a) information and documents supplied or disclosed to, or obtained by, the regulator under section 41: 20
- (b) information derived from information and documents referred to in **paragraph (a)**.
- (2) The regulator must not publish or disclose any information or document to which this section applies unless— 25
- (a) the information or document is available to the public under any enactment or is otherwise publicly available; or
- (b) the information is in a statistical or summary form; or
- (c) the publication or disclosure of the information or document is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the regulator by this Act or any other enactment; or 30
- (d) the publication or disclosure of the information or document is made to a law enforcement or regulatory agency for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the law enforcement or regulatory agency by any enactment; or 35
- (e) the publication or disclosure of the information or document is to a person who the regulator is satisfied has a proper interest in receiving the information or document; or 40

- (f) the publication or disclosure of the information or document is with the consent of the person to whom the information or document relates or of the person to whom the information or document is confidential.
- (3) In relation to personal information, this section applies subject to the Privacy Act 1993. 5
Compare: 2011 No 5 s 59
- 41D Conditions relating to publication or disclosure of information or documents**
- (1) The regulator may, by written notice to a person to whom any information or document is published or disclosed under **section 41C(2)(c) to (f)**, impose any conditions in relation to the publication, disclosure, or use of the information or document by the person. 10
- (2) The regulator must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to protect the privacy of an individual. 15
- (3) Conditions imposed under **subsection (1)** may include, without limitation, conditions relating to—
- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 1993): 20
- (b) the storing of, the use of, or access to anything provided:
- (c) the copying, returning, or disposing of copies of documents provided.
- (4) A person who refuses or fails, without reasonable excuse, to comply with any conditions commits an offence and is liable on conviction to a fine not exceeding \$200,000. 25
Compare: 2011 No 5 s 60

26 New sections 41E and 41F and cross-heading inserted

In Part 2, after the subpart 5 heading, insert:

Disposal of property

- 41E Regulator may issue notice to dispose of property** 30
- (1) This section applies if the regulator has reasonable grounds to believe that a person (A) has, in relation to property,—
- (a) contravened this Act; or
- (b) committed an offence under this Act; or
- (c) failed to comply with a condition of a consent or of an exemption. 35
- (2) The regulator may, by notice in writing, require A to dispose of the property (within the time and in the manner specified in the notice).

- (3) The time specified in the notice must not be less than 90 days after the date on which the notice is given.
- (4) The notice must set out the regulator’s belief and the reasonable grounds for that belief.
- (5) The regulator may withdraw a notice at any time before it is complied with. 5
- (6) In this section and **section 41F**, **property** has the meaning set out in section 47(3).
- 41F Consequences of complying or failing to comply with notice**
- (1) If A disposes of the property within the time and in the manner specified in the notice under **section 41E**, A is not liable for the contravention, offence, or failure referred to in **section 41E(1)**. 10
- (2) **Subsection (1)** does not apply if, in connection with the property, A has—
- (a) made any statement that is false or misleading in any material particular or any material omission in—
- (i) any offer or representation made for the purposes of this Act or regulations; or 15
- (ii) any information or document provided to the regulator; or
- (iii) any communication with the regulator; or
- (b) provided the regulator with a document that is false or misleading in any material particular. 20
- (3) If another person (**B**) is involved in the contravention, offence, or failure referred to in **section 41E(1)**, B may be ordered to pay a civil penalty under section 48 even though A is not liable under **subsection (1)**.
- (4) *See also* Part 4 of the Crimes Act 1961, which relates to parties to the commission of offences. 25
- (5) If A does not dispose of the property within the time and in the manner specified in the notice under **section 41E**, the regulator may take any other enforcement action it thinks fit in relation to the contravention, offence, or failure referred to in **section 41E(1)**.
- (6) However, the failure to comply with the notice under **section 41E** is not itself a contravention of this Act that gives rise to any civil or criminal liability. 30
- 27 Section 46 amended (Offence of false or misleading statement or omission)**
- (1) In section 46(1), replace “false or misleading statement” with “statement that is false or misleading in a material particular”.
- (2) In section 46(2), after “misleading”, insert “in a material particular”. 35

28 Section 48 amended (Court may order person in breach to pay civil penalty)

- (1) In the heading to section 48, after “breach”, insert “or involved in breach”.
- (2) In section 48(1)(d), after “exemption”, insert “; or”.
- (3) After section 48(1)(d), insert: 5
- (e) been involved in a contravention of this Act, the commission of an offence under this Act, or a failure to comply referred to in paragraph (c) or (d).
- (4) In section 48(2)(b), before “any quantifiable gain”, insert “3 times the amount of”. 10

29 New section 48A inserted (Defences for person involved in contravention, offence, or failure)

After section 48, insert:

48A Defences for person involved in contravention, offence, or failure

- (1) This section applies if— 15
- (a) a person (A) contravenes this Act, commits an offence under this Act, or fails to comply as referred to in section 48(1)(c) or (d); and
- (b) another person (B) is involved in the contravention, the commission of the offence, or the failure.
- (2) In any proceeding under section 48 against B for involvement in the contravention, the commission of the offence, or the failure, it is a defence if B proves that— 20
- (a) B’s involvement in the contravention, the commission of the offence, or the failure was due to reasonable reliance on information supplied by another person; or 25
- (b) B took all reasonable and proper steps to ensure that A complied with this Act, did not commit the offence, or complied with the notice or condition referred to in section 48(1)(c) or (d) (as the case may be).
- (3) In **subsection (2)(a)**, **another person** does not include a director, an employee, or an agent of B. 30

Compare: 2013 No 69 s 503

30 Section 51 replaced (Court may order consent holder to comply with condition of consent or exemption)

Replace section 51 with:

51 Court may order compliance with condition of consent or exemption 35

- (1) This section applies to—
- (a) a consent holder:

- (b) a person who is relying on an exemption that is subject to a condition.
- (2) On the application of the regulator, the court may—
- (a) restrain a person from acting in breach of a condition of a consent or of an exemption:
- (b) order a person in breach of a condition of a consent or of an exemption to comply with it. 5

31 New section 51A and cross-heading inserted

After section 51, insert:

Conveyancing certificate

- 51A Provider of conveyancing services must give certificate** 10
- (1) This section applies if a provider is providing conveyancing services to a person (A) who is acquiring an interest in residential land.
- (2) Before the transaction to acquire the interest is given effect, the provider must, in the prescribed manner (if any), certify that, to the best of the provider's knowledge, A will not contravene or commit an offence under this Act by giving effect to the transaction. 15
- (3) The provider must keep a copy of the certificate for a period of at least 7 years after the date on which the transaction is given effect.
- (4) Every person who, without reasonable excuse, fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$20,000. 20
- (5) Sections **41E**, 45, 47, and 48 do not apply in respect of a contravention of this section.

32 Sections 54 and 55 and cross-heading replaced

Replace sections 54 and 55 and the cross-heading above section 54 with:

Giving, providing, or serving notices or documents 25

- 54 Address for service**
- Every consent holder must—
- (a) have a postal or street address in New Zealand for service of notices and other documents; and
- (b) notify the regulator of that address; and 30
- (c) notify the regulator of any change in that address.
- 54A Notices or other documents given, provided, or served by regulator**
- (1) Any notice or other document that the regulator may or must give to, provide to, or serve on any person (A) by or under this Act or for the purposes of any

| | |
|--|----|
| proceeding under this Act must be treated as having been given, provided, or served on A if,— | |
| (a) if A is a consent holder who has complied with section 54 , it has been sent by prepaid post to the last address for service for the consent holder that has been notified to the regulator: | 5 |
| (b) in any other case, it has been served in any of the following ways: | |
| (i) by leaving the document for A in a prominent position on the relevant land (whether or not A is in possession of that land) and sending a copy of the document to the provider who provided conveyancing services to A in respect of the land: | 10 |
| (ii) if A has a known electronic address, by sending it to A at that address in electronic form: | |
| (iii) if A has a known place of residence or business in New Zealand, by sending it by prepaid post addressed to A at that place of residence or business: | 15 |
| (iv) if A has an agent in New Zealand and A is absent from New Zealand, by sending it by prepaid post addressed to the agent at the agent's place of residence or business or by sending it in electronic form to the agent at the agent's electronic address. | |
| (2) In subsection (1)(b)(i) , relevant land means any land in respect of which A has (or is alleged to have)— | 20 |
| (a) contravened this Act; or | |
| (b) committed an offence under this Act; or | |
| (c) failed to comply with a notice under section 38, 39, 40, or 41; or | |
| (d) failed to comply with a condition of a consent or of an exemption. | 25 |
| (3) Subsection (1)(b)(iv) applies regardless of whether the agent is acting or has acted on behalf of A in respect of the property to which the document relates. | |
| (4) This section applies despite any other rule or law. | |
| 55 Non-appearance not ground for court to refuse order under Act if person served in accordance with section 54A | 30 |
| The court must not refuse to make an order under sections 47 to 51 on the ground that a person has not appeared or otherwise taken part in the proceeding if the court is satisfied that the proceeding has been served in accordance with section 54A . | |
| 55A Proof that documents given, provided, or served | 35 |
| (1) If a document is given, provided, or served by sending it by prepaid post, then, unless the contrary is shown, the document is given, provided, or served when it would have been delivered in the ordinary course of post, and, in proving that | |

- the document was given, provided, or served, it is sufficient to prove that the letter concerned was properly addressed and posted.
- (2) If a document is given, provided, or served by sending it in electronic form, then, unless the contrary is shown, the document is given, provided, or served at the time that the electronic communication first enters an information system that is outside the control of the document's originator, and, in proving that the document was given, provided, or served, it is sufficient to prove that the document concerned was properly addressed and sent. 5
- (3) In this section, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications. 10

Subpart 2—Miscellaneous provisions

33 Section 61 amended (Regulations)

- (1) Before section 61(1)(a), insert:
- (aaa) prescribing classes of dwellings not to be treated as residential dwellings in this Act: 15
- (aab) prescribing additional classes of facilities to be treated as excluded accommodation facilities in this Act:
- (2) After section 61(1)(b), insert:
- (ba) for the purposes of **sections 16A(3) and 16B** (commitment to New Zealand test),— 20
- (i) prescribing classes and types of visa and prescribing factors for assessing commitment to reside in New Zealand for those classes and types of visa:
- (ii) setting out trigger events: 25
- (3) After section 61(1)(i), insert:
- (ia) providing, in respect of residential land, for the acquisition by a Māori person of an interest in Māori freehold land for which the person is a member of the preferred classes of alienees (where those terms have the same meaning as in Te Ture Whenua Maori Act 1993): 30
- (ib) implementing obligations that have entered into force for New Zealand before the commencement of the **Overseas Investment Amendment Act 2017** under any international agreements to which New Zealand is a party and that relate to either or both of overseas investments in sensitive land and overseas investments in significant business assets: 35
- (ic) specifying nationality status for the purposes of **section 16A(3)(a)(iii)** where necessary to implement obligations that have entered into force for New Zealand before the commencement of the **Overseas Investment Amendment Act 2017** under any international agreements to

- which New Zealand is a party and that relate to overseas investments in sensitive land:
- (id) prescribing factors for assessing commitment to reside in New Zealand for persons with a nationality status specified in regulations made under **paragraph (ic)**, including nil factors: 5
- (4) After section 61(2), insert:
- (3) Regulations under this Act (including regulations for prescribing fees, charges, bonds, or administrative penalties) may make different provisions for different cases on any differential basis.
- 34 New Schedule 1AA inserted** 10
- Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.

Schedule
New Schedule 1AA inserted

s 34

Schedule 1AA
Transitional, savings, and related provisions

5

s 8A

Part 1

Provisions relating to Overseas Investment Amendment Act 2017

- 1 Existing transactions and applications not affected**
- (1) This Act and the Overseas Investment Regulations 2005 (the **regulations**), as in force immediately before commencement, continue to apply to any transaction entered into or occurring before commencement as if the Overseas Investment Amendment Act **2017** had not been enacted. 10
- (2) In particular, this Act and the regulations, as in force immediately before commencement, continue to apply to the following as if the Overseas Investment Amendment Act **2017** had not been enacted: 15
- (a) any application for consent that is made before commencement;
- (b) any application for consent that is made after commencement and that relates to a transaction entered into before commencement.
- (3) **Subclause (2)** does not limit **subclause (1)**. 20
- (4) This clause applies to a transaction even if, immediately before commencement, the transaction is subject to a condition precedent.
- (5) In this clause and in **clause 2**, **commencement** means the commencement of the Overseas Investment Amendment Act **2017**.
- 2 New information-gathering powers and service provisions apply to matters before or after commencement** 25
- (1) Despite **clause 1**,—
- (a) the regulator may exercise a power under section 41 (as in force after commencement) in connection with any transaction, act, omission, or other matter regardless of whether the transaction, act, omission, or matter occurred before or after commencement; and 30
- (b) **sections 54 to 55A** (as in force after commencement) apply to any document that is served after commencement regardless of whether the document relates to a transaction, act, omission, or other matter that occurs before or after commencement. 35

- (2) **Sections 41B to 41D** (as in force after commencement) apply for the purposes of **subclause (1)(a)**.