



Cook Islands Immigration Act 2021

E. Immigration Policies – Enforcement and Compliance

E1. Prohibited Immigrants – General Provisions

See sections 57-60 Cook Islands Immigration Act 2021

- A person without continuing rights can automatically become a prohibited person in specified circumstances, as set out in section 57 of the Cook Islands Immigration Act. The Prohibited Person provisions do not apply to Cook Islanders.
- No visa or permit may be granted to any person who the **Minister** believes on reasonable grounds:
 - is likely to act or speak in an aggressive, derogatory, or racially or culturally insensitive manner to such a degree or such an extent that it may affect the well-being of the Cook Islands, or
 - is likely to commit an offence in the Cook Islands that is punishable by imprisonment, or
 - is a member of a gang of concern, or
 - is a threat to the security, defence, or public order of the Cook Islands, or
 - has engaged in, or claimed responsibility for, an act of terrorism, or
 - is, or has been, a member or an adherent of any organisation or group of people that has engaged in, or has claimed responsibility for, an act of terrorism, or
 - is, or is likely to become, subject to immigration-related sanctions imposed by the United Nations.
- No visa or permit may be granted to any person who the **Principal Immigration Officer** believes on reasonable grounds:
 - owes a debt to the Crown arising from their obligations, responsibilities, or entitlements, actions, inactions, offences or penalties under the Cook Islands Immigration Act or the regulations, or any other Act or the regulations, or
 - is prohibited from entry under the Cook Islands Immigration Act or has been removed or deported from any other country, regardless of whether they are subject to a prohibition or ban on re-entry to that country,
 - has been convicted of any offence, in the Cook Islands or overseas, and sentenced to a term of imprisonment of 1 year or more, regardless of how that offence and conviction was described in the overseas jurisdiction and the term of the sentence actually served, or
 - has been convicted of more than 1 offence, in any 1 or more countries, for which the total periods of imprisonment imposed exceed 1 year, regardless of how those offences and convictions were described and the terms of the sentences actually served,
 - does not have an acceptable standard of health, having regard to the risk they pose to public health and the likely costs or demands they may impose on the Cook Islands health service.

- These provisions affect visas, permits, immigration clearance, and compliance and enforcement.

E2. The Character Requirement - Prohibited Immigrants

See sections 57 Cook Islands Immigration Act 2021

- Character concern is a key reason for a person becoming or being declared a prohibited person.
- A person can be prohibited if they owe a debt to the Crown arising from an offence or penalty under any Cook Islands legislation. They can also be prohibited if they have been removed or deported from the Cook Islands or any country, convicted of any offence in the Cook Islands or overseas, and sentenced to a term of imprisonment of 1 year or more.

E3. The Health Requirement – Prohibited Immigrants

See sections 57 Cook Islands Immigration Act 2021

- A health concern, or failing to undertake a health check when directed, may mean a person without continuing rights is a prohibited person.
- A person without continuing rights is a prohibited person if they do not have an acceptable standard of health, having regard to the risk they pose to public health and the likely costs or demands they may impose on the Cook Islands health service.

E4. Exercise of Powers

See Part 15 Cook Islands Immigration Act 2021

- Immigration officers are empowered to conduct enquiries, and may also have powers of search, seizure, arrest and detention in some cases, or in assisting other agencies such as Police.
- All powers exercised by officers must be exercised lawfully, respecting the safety, human rights and dignity of all other persons, aiming to preserve property, and using the minimal force required to carry out functions.
- Powers must be exercised in accordance with policy guidelines and the relevant Public Service or agency Code of Conduct.

E5. Powers of entry and search

See sections 189-200 Cook Islands Immigration Act 2021

- When carrying out functions under the Immigration Act, an immigration officer, or designated officer working in a designated area, may enter and search any aircraft or ship about to enter the Cook Islands, any building or premises, or any baggage accompanying a passenger arriving on the ship or aircraft.
- The immigration officer or designated officer does not need a warrant to enter or search such places.
- If the person's passport or certificate of identity or any travel tickets are found, the documents may be retained by the officer for the purpose of administering the Immigration Act (unless the person is found to be a person with continuing rights or has a visa and entry permission).
- The documents must be returned to the person if the person is granted a visa and permit or on the person's departure from the Cook Islands.

E6. Refusal on Arrival

See sections 72, 76 Cook Islands Immigration Act 2021

- If a person arrives who does not meet immigration requirements or is on a prohibited list, they will be refused entry on arrival.
- It is important to ensure that any decision to refuse entry is carefully considered and based on reasonable grounds. Any protection needs will be considered.
- On arrival a person can be refused entry for any one of the following reasons:
 - No passport or equivalent approved document, including non-genuine passport or that used by an imposter

- No visa when required
- No outward-bound ticket when required
- No evidence of sufficient funds
- Certified by a medical officer as a danger on health grounds
- Listed as a prohibited person under section 57 Immigration Act
- No completed Arrival Card.

E7. Seizure of Documents

See section 187, 197 Cook Islands Immigration Act 2021

- An immigration officer may seize and retain the passport or other identity and travel documents of a person without continuing rights in order to determine whether those documents are genuine, preserve them for evidence in proceedings or facilitate the person's departure or deportation from the Cook Islands.
- Fraudulent, falsified or counterfeit documents, and documents carried by an impersonator will be seized, removed from circulation, and where relevant reported to appropriate third country authorities.
- The seized documents will be returned to the appropriate authorities of the State named as the issuer, its Embassy, or High Commission.

E8. Cancelling a Permit

See sections 86, 87 Cook Islands Immigration Act 2021

- An authorised immigration officer has the power to cancel a visitor permit on specified grounds, including when the holder:
 - Is not a person who should have been issued with the permit
 - Has been declared a prohibited person
 - Has been convicted of an offence in the Cook Islands
 - Is unlawfully staying in the Cook Islands
 - Cannot support themselves or their dependents
 - Has had their sponsorship withdrawn
 - Does not provide biometric information when requested
 - Has behaved in a way that has breached peace and good order
 - Has breached any of the conditions of the permit.
- Once a decision is taken to cancel a permit, the person becomes liable to be deported and deportation procedures will begin.

E9. Working, Studying or Residing Without a Permit

See sections 6, 63 Cook Islands Immigration Act 2021

- If a person without continuing rights is working, studying, or residing in the Cook Islands without the appropriate permit, or if their permit has expired, they are a prohibited person as defined by the Immigration Act.
- In such circumstances, checks will be made against the visa and permit records held by Immigration. If confirmed, the person is liable for deportation and deportation procedures will be followed.

E10. Improperly Documented Persons

Chicago Convention Annex 9, 5.7 and Convention on Facilitation of International Maritime Traffic FAL65 Standards 3.3.1-2

- A person without continuing rights may be improperly documented while in the Cook Islands or upon arrival due to:
 - Having lost or had their passport stolen
 - Holding an expired passport
 - Having destroyed their passport
 - Having their passport seized by national authorities
- A person without proper documents may find themselves in those circumstances accidentally or without any intent OR they may have deliberately used non-genuine documents or by intent lost or destroyed them.

E11. Gang of concern members

See sections 4, 57, 58 Cook Islands Immigration Act 2021

- If a person is a member of a gang of concern, they are a prohibited person under the Cook Islands Immigration Act.
- It is important that, when management and screening gangs of concern members who are persons without continuing rights, all staff are safe, and sufficient information is collected to support the turnaround process if required.
- No Cook Islanders can be subject to this process.

E12. Deportation

See Part 10 Cook Islands Immigration Act 2021

- The Minister has the power to make an order directing that a person be deported from and remain outside the Cook Islands permanently or for a specified period if a person has had a permit cancelled and/or are a prohibited person.
- If a person is liable to have a deportation order made against them, they may prefer to depart voluntarily if given the opportunity. Depending on the scale of unlawfulness, Immigration may issue a deportation notice to the person before a formal deportation order is made, to put the person on notice that they should leave the Cook Islands.
- When seeking deportation, consideration will be given to whether the person may be persecuted or suffer any breach of their fundamental rights if returned.
- A person who was deported from the Cook Islands is subject to a period of prohibition on re-entry and may not be granted a visa or permit during this time.

Reason for Deportation	Period of prohibition
Temporary	
▪ Held a transit visa but did not board a craft before the transit period expired	5 years
▪ Failed to provide the information required to be provided by the regulations on entry or to show that they held a permit or (if they did not hold a permit) apply for a permit	5 years
▪ Failed to present themselves at a designated place or to a designated officer without delay	5 years
▪ Was refused a permit on arrival in the Cook Islands or had their permit cancelled	5 years
▪ Had their honorary permanent residence or permanent residence revoked	5 years
▪ Was unlawfully in the Cook Islands (for reasons other than travelling to or staying in the Cook Islands under a false identity)	5 years
▪ Breached the conditions of their visa or permit or exemption	5 years
▪ Concealed, omitted, or misrepresented relevant information in relation to their application for a visa or permit	5 years
▪ Failed to advise an immigration officer of any material change of circumstances, while their application for a visa or permit was being	5 years

<i>Reason for Deportation</i>	<i>Period of prohibition</i>
considered or after it was granted	
Permanent prohibition (only for persons aged 18 and over)	
▪ In the Cook Islands under a false identity	Permanent
▪ In the Cook Islands as a result of fraud	Permanent
▪ Was believed by the Minister to be: <ul style="list-style-type: none"> (i) likely to commit an offence in the Cook Islands punishable by imprisonment (ii) or have been, a member of a gang of concern (iii) a threat to the security, defence, or public order of the Cook Islands (iv) previously engaged in, or claimed responsibility for, an act of terrorism (v) or have been, a member of, or an adherent of any organisation or group of people that has engaged in, or claimed responsibility for, an act of terrorism (vi) or to be likely to become, subject to immigration-related sanctions imposed by the United Nations 	Permanent

E13. Detention

See sections 133,134 Cook Islands Immigration Act 2021

- Immigration legislation provides that a person without continuing rights who is liable to be deported or is subject to a deportation order may be arrested and/or detained pending deportation.
- The purpose for arrest or detention are to:
 - to ascertain the identity of the person detained and determine any rights they have to be in the Cook Islands, or confirm whether they are liable to deportation from the Cook Islands
 - to await the provision of additional information to establish whether the person is liable to deportation from the Cook Islands
 - to enable a deportation order to be served on the person
 - to await the expiry of any period allowed for a review or an appeal to be lodged, and if lodged, to await the determination of that review or appeal
 - to ensure that the person does not evade deportation from the Cook Islands.
- It is preferred to encourage and facilitate voluntary departure where possible, instead of enforced departure involving detention and the use of force.

E14. Offences and Fines

See Part 17 Cook Islands Immigration Act 2021

- There are a range of offences in the Cook Islands Immigration Act for people who do not comply with requirements of legislation. This includes visa and permit holders as well as carriers, employers, education providers, internship providers and sponsors.

Failing to comply with the requirements of the Immigration Act

- A person who fails to comply with the requirements of the Cook Islands Immigration Act is liable on conviction to a fine not exceeding \$10,000 or imprisonment not exceeding 3 months, or both.

Alteration or destruction of visa or permit

- A person who commits alters or destroys a visa or permit without lawful authority is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or to both.

Provision of false or misleading information

- A person who provides false or misleading information is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

Alteration of forms

- A person who is not an immigration officer or a designated officer, alters a form and signs it and declares its contents to be true, is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

Publishing false or misleading information

- A person who publishes false or misleading information is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

Improper dealings with immigration or identity documents

- A person who has improper dealings with immigration or identity documents is liable on conviction to a fine not exceeding \$100,000 or a term of imprisonment not exceeding 7 years.

Impersonation

- A person who, not being an immigration officer or a designated officer, personates or pretends to be an immigration officer or a designated officer is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or both.

Bond recovery

- A person commits an offence if they recover the amount of a bond from a person who is not the subject of a bond, or deducts the amounts from the wages or entitlements of any person to recover the costs of a bond, or uses any other mechanism to recover the cost of a bond.
- This offence is liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 1 year, or both.

Carrier offences

- A carrier or person in charge of an aircraft who fails to comply with the requirement to provide advanced passenger information 76 hours and 1 hour prior to departure to the Cook Islands and as soon as practicable after departure to the Cook Islands is liable on conviction to a fine not exceeding \$50,000.

Employer, education provider offences

- A person who fails to comply with their obligations as an employer, education or internship provider commits an offence against the Cook Islands Immigration Act and is liable on conviction to a fine not exceeding \$50,000.
- This includes:
 - employing a person without taking reasonable steps to ensure that the person is entitled to work in the Cook Islands.
 - employing a person without informing an immigration officer of any changes in the circumstances, changes to the terms and conditions of the employment contract or any termination of the person's employment.
 - employing a person without a written employment contract that complies with the Employment Relations Act 2012.
 - recruiting or sponsoring a person without assisting the person to comply with any requirements or conditions of person visa or permit and complying with sponsorship obligations.
 - coercing, threatening, deceiving, or otherwise exploiting an employee, compelling an employee to work outside the terms and conditions of their contract of employment,

withholding anything that belongs to that employee, including information, documents or money.

- not taking reasonable steps to ensure that a person without continuing rights is entitled to study in the Cook Islands before enrolling the person in a course of study or granting the person an internship in the Cook Islands.
- enrolling a person in study or an internship without informing an immigration officer any changes in the circumstances affecting enrolment in the course or the internship.
- not providing any enrolment or attendance records and any other relevant records an immigration officer on request.
- not ensuring that an intern has a written agreement stating the terms of the internship.
- not assisting a student or intern to comply with any requirements or conditions of a visa or permit.
- coercing, threatening, deceiving or otherwise exploiting a student or an intern, or compelling them to work outside the terms and conditions of their contract or enrolment, or withholding anything that belongs to that student or intern, including information, documents or money.

E15. Administrative fines

See sections 219-226 and Schedule 4 Cook Islands Immigration Act 2021

- If an immigration officer has reason to believe that a person has committed an offence punishable by an administrative fine, the immigration officer may issue a notice requiring the person to pay the administrative fine prescribed in Schedule 4 of the Cook Islands Immigration Act for that offence instead of prosecuting the person.

E16. Victims of Trafficking and Asylum-seekers

- When a person is stopped at the border, identified as working in breach of their permit, or identified as a prohibited person, consideration will be given to the circumstances in which that person is arriving or working.
- If there is any indication that the person is being coerced to travel, forced to work against their will, or working in or under conditions that are not acceptable in the Cook Islands, it may be that the person is a victim of trafficking and in need of help.
- If trafficking is suspected, the Police will be contacted, and support provided to the victim where possible. Similarly, a person may make claims to asylum, or that they may be persecuted upon return to their country of citizenship or usual residence.
- The Cook Islands is not a signatory to the 1951 Convention on the Status of Refugees. If a person arrives seeking asylum, the New Zealand High Commission, UNHCR, the International Organization for Migration (IOM) or the PIDC Secretariat will be advised and asked for support and guidance.

E17. Stranded Persons

- If a person without continuing rights is stranded in the country, the International Organization for Migration (IOM) may be able to provide assistance in order to return them to their country of nationality through their assisted voluntary returns (AVR) programme.
- The assistance that can be provided by IOM is for persons who:
 - are from outside the region
 - are not able to legally remain in the country
 - want to return home.
- This can include victims of trafficking or people smuggling, unsuccessful asylum seekers, refugees, or stateless persons.

E18. Lost or Stolen Passports

- It is important that lost or stolen passports are reported to the Police and a record kept of the passport details, including the passport number
 - Lost or stolen passports can be altered or used by imposters to enable people to travel using false identities
 - Keeping a record of lost or stolen passports means checks against these records can be undertaken for suspicious documents
- Interpol maintains an international database of lost or stolen passports to which countries will report via their national Police.