



PACER Plus **Chapter Summary 2021**

Chapter 8: Movement of Natural Persons



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Summary of PACER Plus – Movement of Natural Persons Chapter

What is this summary about and who is it for?

This summary describes the obligations in PACER Plus that apply to the **movement of natural persons** (also known as **temporary entry**). It is intended for anyone who wants an overview of the PACER Plus obligations.

What does the Movement of Natural Persons Chapter do?

The Movement of Natural Persons (**MNP**) Chapter aims to make it easier for business people and skilled or semi-skilled workers from one PACER Plus country to gain **temporary entry** into another PACER Plus country.

Temporary entry means a visit to another country without the intent to establish permanent residence, e.g. for a business trip.

What are the objectives of this Chapter?

The Chapter has a number of objectives, being to:

- provide for rights and obligations additional to those set out in the Chapters on Services and Investment
- facilitate the temporary entry of natural persons as set out in the Chapter and its Schedules
- establish transparent criteria and streamlined immigration formality application procedures for the temporary entry of natural persons who are covered by the Chapter, and
- protect the integrity of countries' borders, and protect the domestic labour force and permanent employment inside countries.

What agencies is the Movement of Natural Persons Chapter relevant to?

The MNP Chapter is of most relevance to the government agency in each PACER Plus country that is responsible for immigration procedures (e.g. Department of Immigration).

Does PACER Plus affect domestic laws on citizenship and permanent residence?

No. PACER Plus does not apply to a country's laws regarding citizenship or permanent residence. Nor does PACER Plus say anything about persons seeking access to a country's permanent employment market.



Relationship between the MNP Chapter and other Chapters

The relationship between the Chapters in PACER Plus can be a bit confusing. Key points to be aware of that impact the MNP Chapter are set out below.

Investment and Services Chapters

The Investment and Services Chapters aim to encourage a stable and predictable environment to attract and promote investment between PACER Plus countries, and to make it easier for people and businesses from PACER Plus countries to provide services to customers in each other's countries.

However, it can be difficult for a foreigner to **invest** in or provide a **service** to customers in another country unless, for example, they can visit to check up on their operations, and send senior managers to work in-country for a while. To facilitate this, PACER Plus requires countries to allow business people to provide services by visiting on a temporary basis. That is what this chapter – the MNP Chapter – is about.

In technical trade jargon, "movement of natural persons" is known as "**Mode 4**" services – Mode 4 involves the movement of people from one country to another on a temporary basis. For example, a person from Kiribati who comes to work in a restaurant in Niue, or a consultant from New Zealand comes to visit Niue to see customers.

Transparency Chapter

The Trade in Services Chapter has transparency obligations that require countries to **publish** certain information so that individuals and businesses from other PACER Plus countries can easily find out about it.

This makes it easier for businesses, traders and investors to know as much as possible about the conditions of trade and investment in the countries where they want to do business or operate.

PACER Plus also has a separate Transparency Chapter, which sets out general transparency requirements that apply to measures affecting trade, including in relation to the movement of natural persons.



Commitments to allow entry of certain categories of people

The commitments

Each PACER Plus country has committed to allow entry of certain categories of **people from other PACER Plus countries**. The categories and how long they must be allowed to enter the country for are set out in each country's Schedule of Temporary Entry Commitments (**Schedule**).

During the negotiations and ratification process, PACER Plus governments had to ensure that their country's immigration laws and regulations complied with their commitments by allowing for entry of the categories of people set out in the Schedule.

What the commitments don't cover

While PACER Plus countries are required to allow the committed categories of people to enter for the specified time period, nothing in PACER Plus prevents countries from:

- applying measures to regulate the temporary entry of natural persons, including measures necessary to protect the integrity of its territory and to ensure the orderly movement of people across borders (e.g. a visa, permit, pass or other document demonstrating that person's right to enter, reside or work in the PACER Plus country can be required),
- continuing to apply qualification or other requirements needed to carry out a profession or activity in the country, or
- applying eligibility requirements such as police checks or medical checks.

What is meant by "people from other PACER Plus countries"?

The commitments apply to people that have nationality or citizenship of other PACER Plus countries, or a right of permanent residence there. This means, for example, that the commitments extend to a person from a third country (say Fiji or France) who are permanent residents of New Zealand.

Changing the commitments

There is no formal mechanism in PACER Plus for countries to change their commitments. However, countries may always improve access to natural persons from other countries, so long as it is on a non-discriminatory basis.

There is provision for countries to review their commitments from time to time, with the first review taking place within three years of entry into force. The aim of these reviews is to make movement of people among PACER Plus countries more liberal, not less.

Can PACER Plus countries still require people to have a visa to enter?

Yes. Although PACER Plus countries must allow entry of certain categories of people from other PACER Plus countries, those people may still be required to obtain a visa prior to their arrival if they plan to work or set up business in the country.



Categories of people covered by this Chapter

There are a number of different categories of persons, as described below. However, these examples serve only as a basic guide and it will be necessary to consult each country's Schedule for the precise commitments and definitions relevant to that country.

Table 1. Explanation and examples of categories of people

Category	Explanation	Example
Business Visitor	A business visitor is someone who comes into a country temporarily. This means that they do not intend to stay permanently.	A fishing boat vendor from Samoa comes to Niue to negotiate boat prices.
Intra-corporate transferees	An intra-corporate transferee (usually an executive, senior manager or specialist) is an employee of an enterprise of one PACER Plus country that has established in another country a branch, subsidiary or affiliate, who is transferred to fill a position in the branch, subsidiary or affiliate in that country.	Someone from an engineering firm in New Zealand transfers to the firm's office in the Cook Islands.
Contractual service suppliers	Usually an employee of a service supplier or an enterprise in one PACER Plus country who enters the territory of another temporarily in order to perform a service pursuant to a contract(s) between their employer and an enterprise in the territory of the country they are coming to.	An employee of a software company in Australia enters Vanuatu to perform software updates for a company they have a contract with in Vanuatu.
Independent service suppliers	A self-employed natural person of one PACER Plus country who is a service supplier entering the territory of another country pursuant to a contract with an enterprise in that country's territory (may be sponsored by that enterprise).	A self-employed consultant from Niue enters the Solomon Islands to provide climate change consulting services under a contract with a company in Honiara.
Services or installers	An installer or servicer of machinery or equipment, where the installation or servicing by the supplying company is a condition of purchase of the machinery or equipment.	A company in Tuvalu purchases a bread making machine and a person from Australia comes to Tuvalu to service the machine.
Skilled or semi-skilled worker	A natural person of one country who enters the territory of another in order to work temporarily under an employment contract with an enterprise there.	A Samoan diving instructor enters Tonga to work pursuant to a temporary employment contract with a tourism company in Tonga.



Immigration officials must facilitate entry and provide for transparent procedures

There are two important principles for officials in one PACER Plus country dealing with someone from another PACER Plus country who is seeking temporary entry. These are that immigration procedures must **facilitate temporary entry** and **be transparent**.

These principles are to be balanced against:

- protecting the integrity of a country's borders, and
- protecting domestic workers and permanent employees.

This balancing act is why it is important that the procedures for temporary entry are clear and consistently followed.

Facilitate temporary entry:

This means helping individuals from one PACER Plus country to enter another PACER Plus country temporarily by ensuring there are clear and consistent procedures for them to follow when they apply for entry

Be transparent:

This means that individuals know what immigration rules and procedures apply to their situation – e.g. by the host country making information readily available to people about the application forms and supporting documents they must provide

These principles are further supported by obligations in relation to 'immigration formalities'. These obligations are discussed on the next page.





Obligations about immigration formalities

The term '**immigration formalities**' refers to a visa, permit, pass or other document or electronic authority granting a natural person of a Party the right to enter, reside or work in the territory of the granting Party.

Where a PACER Plus country has made commitments for a category of people (as listed in its Schedule), it must grant entry to people in that category who come from another PACER Plus country.

But, entry only has to be granted if applicants:

- follow the correct application procedures, and
- meet all relevant eligibility requirements for entry (such as passing police checks, providing medical certificates and obtaining the relevant visa).

Processing applications for immigration formalities

PACER Plus countries are required to:

- allow people from other PACER Plus countries to apply for and receive an **immigration formality** before arriving in the country
- process applications for immigration formalities **expeditiously**, including extensions of visas. Expeditiously means quickly.
- if the applicant requests it, a country's authorities must, within a **reasonable period of time** from when an application is made, notify the applicant of:
 - receipt of their application
 - the status of their application, and
 - the decision concerning the application, including:
 - if approved, how long they are allowed to stay and any other conditions, and
 - if refused, the reasons for refusal and any avenues for review.

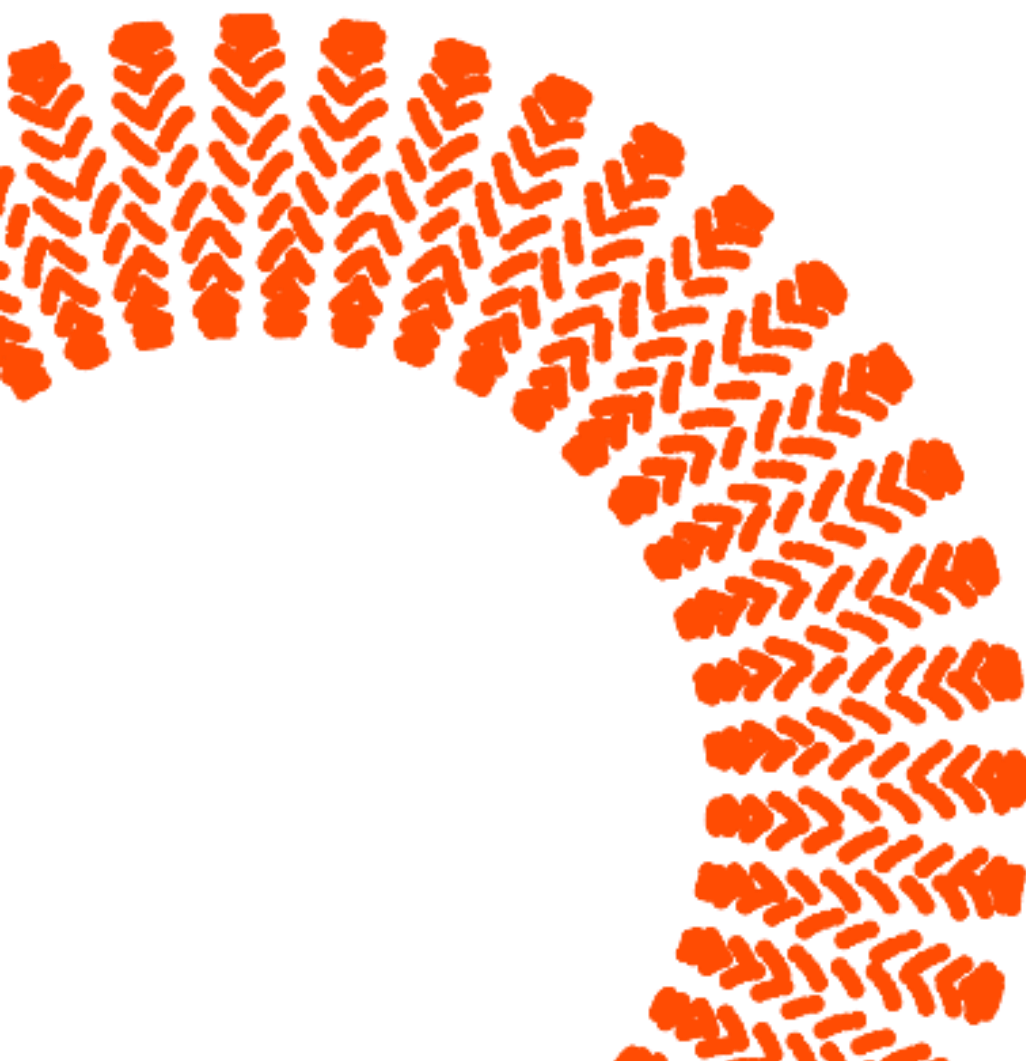
What constitutes a **reasonable period** will depend on the specific circumstances of each situation, including how difficult it is to obtain information. In essence, the reasonableness of the time taken will depend on whether it is justifiable (as opposed to unwarranted and excessive).



Immigration formalities that include requirements relating to authorisation, licensing or certification

Sometimes an immigration formality may include requirements relating to authorisation, licensing or certification. A government may have entered into agreements with other PACER Plus countries to recognise these things. The terms of any such agreements must be applied consistently. If so, the PACER Plus country:

- is required to accord other PACER Plus countries adequate opportunity to negotiate accession to any present or future agreement it has with a non-Party that recognises education, experience, requirements, licences or certification, and
- where it decides itself to grant recognition autonomously, is required to afford adequate opportunity for another Party to demonstrate that the relevant thing obtained in that other Party's territory should be recognised.





Contact Points

PACER Plus sets up systems to ensure that officials from one country can easily get in touch with their counterpart officials in other PACER Plus countries, and obtain information about other countries' practices. Each country has to name a Contact Point who will be responsible for the Movement of Natural Persons Chapter.

What must Contact Points do?

The Contact Point is responsible for facilitating communications between the PACER Plus Parties on any matter covered by the Movement in Natural Persons Chapter.





Exceptions to the obligations

Overview

PACER Plus has a number of exceptions that allow countries to justify actions that would otherwise be a breach of the obligations in the Movement of Natural Persons Chapter. The exceptions are set out in Chapter 11 (General Provisions and Exceptions). Those applicable to the Movement of Natural Persons Chapter are described briefly below.

The description of the exceptions below is very general, **and advice should be sought on the application of the exceptions in any given situation.**

National security

PACER Plus does not require any country to provide information if it considers that to do so would be contrary to its **essential security interests**.

Also, PACER Plus does not prevent any country from taking:

- a measure that it considers necessary to protect its **essential security interests**, or
- actions in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Essential security interests are those:

- relating to fissionable and fusionable materials or the materials from which they are derived,
- relating to the traffic in arms, ammunition, and implements of war and to such traffic in other goods and materials, or relating to the supply of services, as carried on directly or indirectly for the purpose of supplying or provisioning a military establishment
- taken so as to protect critical public infrastructures including communications, power and water infrastructures from deliberate attempts intended to disable or degrade such infrastructures, or
- taken in time of war or other emergency in international relations.

Treaty of Waitangi (only applicable to New Zealand)

New Zealand may adopt any measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by PACER Plus, including in fulfilment of its obligations under the Treaty of Waitangi. Such measures may not be used as a means of arbitrary or unjustified discrimination or as a disguised restriction on trade.

Disclaimer: This document provides a general summary of the obligations in the PACER Plus Movement of Natural Persons Chapter. It is for general information purposes only and is not intended to replace the legal text, or provide legal advice. It does not represent the legal interpretations or legal positions of any PACER Plus Party. Readers should not act or refrain from acting on the basis of information in this summary without seeking appropriate legal advice on the particular facts and circumstances at issue.