

The Home Office has finally provided further guidance in relation to those affected by travel restrictions associated with coronavirus (COVID-19). The guidance applies to holders of UK visas and those applying for UK visas from both in and outside the UK, as well as British nationals overseas who need to apply for a passport. The Home Office's only other immigration-related COVID-19 guidance prior to this was issued on 27 February 2020 (some time before the impact of the virus really took hold in the UK), and only covered Chinese nationals in the UK with expiring visas, or non-Chinese/non-EEA nationals in the UK normally resident in China. Unfortunately, a number of questions remain unanswered, and we will continue to inform clients and contacts as the Home Office guidance is updated.

## If You Are in the UK and Your Leave Expires Between 24 January 2020 and 31 May 2020

Regardless of your nationality, the Home Office has now confirmed that your visa will be extended to 31 May 2020 if you cannot leave the UK because of travel restrictions or self-isolation related to COVID-19. The Home Office has confirmed that no individual who is in the UK legally, but whose visa is due to, or has already expired, and who cannot leave because of travel restrictions related to COVID-19, will be regarded as an overstayer, or suffer any detriment in the future. Those with UK visas in this position should contact the Coronavirus Immigration Help Centre by email on [CIH@homeoffice.gov.uk](mailto:CIH@homeoffice.gov.uk) confirming their full name; date of birth (dd/mm/yyyy); nationality; previous visa reference number; and why they cannot leave the UK to return to their home country, e.g. if the border has closed. The Home Office has said it will acknowledge receipt of the notification and confirm to the individual once their visa has been extended. There is also a free Coronavirus Immigration helpline number, 0800 678 1767 (Monday to Friday, 9am to 5pm), but this usually has a long caller-waiting time, and sending an email means the individual will be able to retain a record of their notification.

## If You Are Applying to Stay in the UK Long-Term

The Home Office has confirmed that given the current unique circumstances, applicants will be able to apply from the UK to switch to a long-term UK visa until 31 May 2020. The Home Office guidance states that this includes those whose leave has already been automatically extended to 31 March 2020. This is an important concession, as it permits a visa application from within the UK where the applicant would usually need to apply from their home country. It will apply to those intending to apply for a Tier 2 (General) visa, but currently in the UK with a standard visitor visa, a Tier 5 Youth Mobility visa or a Tier 2 dependant visa. Applicants will still need to meet all other relevant criteria for the visa in question. Applicants can apply online and the terms of their leave will remain the same until their application is decided.

## If You Are Outside the UK

Many UK Visa Application Centres (VACs) are closed or offering limited services. For advice on UK visa services in specific countries, applicants should contact:

- [TLS contact](#) for those in Europe, Africa and/or parts of the Middle East
- [VFS global](#) for all other countries

In some areas, the UK cannot now send visa vignettes across borders and routes due to border restrictions. Those who have visa application appointments where the VAC in the country where they are applying is now closed will be contacted and told their appointment will not take place. For those applying for UK visas who are required to satisfy the English language requirement, English Testing Centres are also affected. Applicants should contact [the International English Language Testing System \(IELTS\)'s website](#) or their test centre for more information.

## Getting Your Documents Back Once You Have Submitted an Application Outside the UK

For those who have paid for courier return, passports will be returned if courier routes remain open. If an applicant's passport is currently held in a VAC and they need it to be returned by courier, applicants should contact either TLS contact or VFS global directly if they have not already paid for courier return. The Home Office advises that anyone concerned about the return of their passport should contact the Coronavirus Immigration Help Centre, and that they will prioritise the return of all documents once VACs are open.

## British Nationals Abroad Who Need to Apply for a Passport

Those in need of a new British passport in a country where the VAC has closed and who urgently need to travel to the UK will only be able to apply for an [emergency travel document](#).

## Additional Questions

We are conscious that many employers will have immigration-related COVID-19 questions not covered by this latest, or any other, Home Office guidance. These include concerns over:

- **How to carry out right to work checks where an individual is unable to present their original document for checking by the employer.** A right to work check usually requires the employer to have sight of the original document in the presence of the holder. This can include seeing them in person or via a live video link, but this still leaves the requirement to see the original document.

There is an [online right to work service](#) but it only works in some cases – it does not apply to British passport holders, for example. It does work for those with:

- A biometric residence permit
- A biometric residence card
- Those with EU/EFTA passports or national identity cards, but only if they already have settled or pre-settled status

Where the online right to work service cannot be used and a physical document check is not possible, we recommend employers take the following steps before the employment starts:

- Rely on a good quality scanned copy or photo of the right to work document, plus a live video call with the individual to check they are the person in the photo
- Make a note on the copy document or a contemporaneous file note to explain why it was not possible to see the original document
- Make arrangements to see the original document and re-do the check as soon as this becomes practicable – employment beyond that should be conditional on this proper check being conducted

In the absence of formal Home Office guidance, employers may be concerned that this approach will not provide a statutory excuse. However, assuming that the document presented does confirm the right to work, is not a forgery and does belong to the employee presenting it, the chance of an employer having to rely on a proper right to work check to defend a civil penalty in this situation is very low. An employer cannot be penalised simply for not having done a right to work check properly if the employee in question does, in fact, have the right to work.

- **Those intending to obtain indefinite leave to remain (ILR) or settled status at some point in the next five years should still try to ensure that their absences from the UK do not exceed of 180 days (for ILR) or six months (for settled status) in any 12-month period during the five-year period immediately prior to their application.** Currently, those seeking to apply for ILR may exceed the 180-day threshold in the event of absences resulting from natural disaster or if they have been involved in humanitarian rescue operations overseas.

There are also some exceptions to the six-month absence rule for those intending to apply for settled status, including, amongst others, one period of up to 12 months for an important reason (e.g. childbirth, serious illness, study, vocational training or an overseas work posting). However, under current rules, this would only apply to an applicant who has spent time outside the UK if they became ill as a result of COVID-19, and even then, any period spent outside the UK before contracting the disease would not fall within the exception. If travel restrictions continue for an extended period, we expect the Home Office to expand the exceptions to cover those restricted from travelling back to the UK as a result of COVID-19, but nothing has been confirmed as yet. As a precaution, those caught outside the UK and concerned about their future ILR or settled status applications should retain evidence to confirm the reason they have been prevented from returning, including national lock-downs, medical advice advising against travel and travel restrictions.

- **Those with UK visas currently outside the UK and unable to return in time to submit an extension application before their current visa expires.** Under current rules, with limited exceptions, if the holder of a Tier 2 visa is outside the UK when their visa expires, they will be hit by a 12-month “cooling-off period” preventing them from applying another Tier 2 visa (or extending their previous one). We expect the Home Office to provide reassurance to holders of UK visas in this situation (including, possibly, the ability to submit an application from outside the UK), but nothing has been confirmed as yet. As a precaution, those caught outside the UK who are unable to return in time to submit an extension application should retain evidence to confirm the reason they have been prevented from returning, including national lock-downs, medical advice advising against travel and travel restrictions.

If you have any questions regarding COVID-19 and how it might affect your employees’ immigration status, please contact your usual Squire Patton Boggs Business Immigration team lawyer.

## Contacts

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